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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 154

ANDERSON NATIONAL BANK, SUING ON BEHALF
OF ITSELF AND ALL OTHERS SIMILARLY SITU-
ATED, APPELLANTS,

vs.

H. CLYDE REEVES, INDIVIDUALLY AND AS COM-
MISSIONER OF REVENUE OF THE STATE OF
KENTUCKY, ETC., ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF KENTUCKY

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[fol. 1] **IN THE COURT OF APPEALS OF KENTUCKY**

**ANDERSON NATIONAL BANK, Suing on Behalf of Itself and
All Others Similarly Situated, Appellant,**

vs.

**H. CLYDE REEVES, Individually and as Commissioner of
Revenue of the State of Kentucky and a Member of the
Kentucky Tax Commission; C. M. C. Porter and R. L.
McFarland, Individually and as Associate Commissioner
of Revenue of the State of Kentucky and as Members of
the Kentucky Tax Commission; Hubert Meredith, Indi-
vidually and as Attorney General of the State of Ken-
tucky, Appellees**

Appeal from Franklin Circuit Court

STATEMENT ON APPEAL

1. The judgment appealed from herein was rendered on May 8, 1942 and the pages of the Record herein the judgment may be found are pages 74 to 76.

2. The Circuit Judge before whom the case was tried, is Hon. W. B. Ardery.

3. The appellant does not wish to have summons issued or a warning order made.

4. The attorney for the appellees are Hubert Meredith, Attorney General, A. E. Funk, Earl S. Wilson and R. Vincent Goodlett, Assistant Attorney Generals, Frankfort, Kentucky.

(Signed) Charles W. Milner, Leo T. Wolford, Coun-
sel for Appellant, Louisville, Kentucky.

[fol. 4] IN FRANKLIN CIRCUIT COURT

ANDERSON NATIONAL BANK, Suing on Behalf of Itself and
All Others Similarly Situated, Plaintiff,

v.

H. CLYDE REEVES, Individually and as Commissioner of
Revenue of the State of Kentucky and a Member of the
Kentucky Tax Commission; C. M. C. Porter and R. L.
McFarland, Individually and as Associate Commissioners
of Revenue of the State of Kentucky and as Members of
the Kentucky Tax Commission; Hubert Meredith, In-
dividually and as Attorney General of the State of Ken-
tucky, Defendants

BILL OF COMPLAINT IN EQUITY AND PETITION FOR DECLARATORY
JUDGMENT—Filed August 27, 1940

Plaintiff, Anderson National Bank states:

Plaintiff is a national banking association organized
under the national banking laws of the United States and
with all of the powers incident thereto. Plaintiff's principal
office and place of business is in Lawrenceburg, Anderson
County, Kentucky.

[fol. 5] The defendant, H. Clyde Reeves, is the Commis-
sioner of Revenue of the State of Kentucky, duly qualified
and acting as such and in such capacity is charged with the
administration of the Department of Revenue and specif-
ically, among other things, with the enforcement of Chapter
79 of the Acts of 1940, page 333, now Ky. St. 1605a through
1622-1, both inclusive, which is the 1940 Kentucky Escheat
Law; and which will be further referred to hereinafter. The
defendant Reeves is a member of and the chairman of the
Kentucky Tax Commission.

The defendants, C. M. Porter, and R. L. McFarland, are
members of the Kentucky Tax Commission and Associate
Commissioners of Revenue of the State of Kentucky, duly
qualified and acting as such, and in such capacity are
charged with the administration of the Department of
Revenue and specifically, among other things, with the en-
forcement of said Escheat Law.

The defendant, Hubert Meredith, is the Attorney General
of the State of Kentucky, duly qualified and acting as such,
and in such capacity is charged with the duty of enforcing

the laws of the State of Kentucky by civil and criminal proceedings and the duty of advising the several departments of the State of Kentucky, including the Department of Revenue and the Kentucky Tax Commission, of their legal rights and duties.

At its 1940 Session the General Assembly of Kentucky [fol. 6] passed Chapter 79 of the Acts of 1940, page 333, being Ky. St. 1605a to 1622-1, both inclusive, which is the 1940 Kentucky Escheat Law. Said law is unconstitutional, void and of no effect for the following, among other, reasons:

A. Under Section 3 (Ky. St. 1606) the Act provides that there shall vest in the Commonwealth (without notice or hearing or opportunity to be heard) all property having a situs in this State (a) of persons who have died without heirs or distributees, (b) which has been devised and is unclaimed for eight years, and (c) estates (other than a corporeal hereditament) which have been abandoned. This section further provides that all of such property shall be liquidated and the proceeds, less expenses of liquidation and debts, shall be paid to the Department of Revenue.

No provision is made as to who determines the facts on which such escheat or vesting of title in the Commonwealth depends. No requirement is made for any judicial proceeding or any notice to the owner or his heirs that the State is proposing to escheat his property.

B. Section 4 (Ky. St. 1607) provides that personal representatives of persons all or a part of whose estates are not distributed by will and who die without heirs shall settle their accounts within one year and pay to the Department of Revenue the proceeds of all personal estate after deducting liabilities.

[fol. 7] Again no provision is made as to who determines the facts on which such escheat or vesting of title in the Commonwealth depends. No requirement is made for any judicial proceedings or any notice to the owner's heirs that the State is proposing to escheat their property.

This section also provides that the personal representative shall take possession of and rent the real estate "until it is otherwise legally disposed of" and pay the net proceeds to the Department of Revenue.

The Act contains no provision as to how or by whom such property is or may be "legally disposed of."

C. Section 5 (Ky. St. 1608) provides that if an heir, devisee or distributee shall fail for eight years to claim his legacy, the personal representative after deducting legal liabilities shall pay such legacy "whether the same be real or personal estate and the net proceeds thereof to the Department of Revenue."

D. Section 6 (Ky. St. 1609) provides that when any person owning property or estates having a situs in this Commonwealth is not known to be living for seven successive years and neither the owner nor his heirs, etc. "can be located or proved to have been living for" seven years, such person shall be presumed to have died without heirs and both his real and personal estate shall be liquidated and the proceeds less costs of the liquidation and liabilities against [fol. 8] the estate shall be paid to the Department of Revenue.

No provision is made as to who determines the facts on which such escheat depends (the Act nowhere says that the title to such property shall vest in the Commonwealth). No requirement is made for any judicial proceedings or any notice to such person or his heirs that the State is proposing to escheat his property. No provision is made as to who takes possession of the property or who liquidates it in order to pay the proceeds to the Department of Revenue.

E. Section 7 (Ky. St. 1610) provides that when the owner of a demand deposit in a State or national bank has not within the ten preceding years (a) negotiated in writing with the bank in respect thereto, or (b) been credited with interest on the passbook or certificate of deposit on the depositor's request, or (c) had a transfer noted of record in the books of the bank, or (d) increased or decreased the amount of the deposit, "such deposit and the interest thereon shall be presumed abandoned."

There is the same provision in this section as to time deposits except that the period of time is twenty-five years instead of ten.*

* Thus, if a person owning a bank deposit has been missing for seven years and otherwise comes within the purview of Section 6 (Ky. St. 1609) above, is such deposit to be paid

[fol. 9] This section further provides that deposits of money or any other thing to secure services, etc., "shall be presumed abandoned unless claimed + by the person" within ten years after the holder was obligated to return it.

The section further provides that all dividends, monies, credits, claims and all intangible personal property whatsoever held within this Commonwealth by any person for the benefit of another "shall be presumed abandoned unless claimed by the person entitled thereto" within ten years from the time the holder was obligated to return the same.

The Act further provides that any money paid into court "shall be presumed abandoned if not claimed" within a given time.

Thus, in the case of unclaimed demand and time deposits in banks, if the owner does not do certain things within eight or twenty-five years, respectively, such deposit is presumed abandoned, whereas in the case of deposits to secure services and in all other cases where property is held for another, such property "shall be presumed abandoned unless" the owner does certain things. So that in the case of all deposits, claims, etc., except those in banks, the Act provides for an immediate presumption of abandonment [fol. 10] and escheat "unless" the owner defeats the presumption by making claim thereto within a certain time.

F. Section 8 (Ky. St. 1611) provides that it is the duty of all State and national banks, courts and everyone else holding property in any capacity that comes under the provisions of Section 7 (Ky. St. 1610) above, to report to the

to the Department of Revenue immediately or does it wait for ten years or twenty-five years as provided in Section 7 (Ky. St. 1610) just referred to above?

+ The word "claim" is defined in the Act, Section 2 (Ky. St. 1605a) as follows: "Whenever used in this Act unless the context requires otherwise the word 'claim' shall mean to demand payment or surrender of property from the person whose duty it is to pay the claimant or surrender to him the property involved."

So that a person with knowledge of his deposit may not leave the deposit for safe keeping or for the purpose of drawing interest thereon but must actually demand payment in order to avoid the confiscation of it by the State.

Department of Revenue on or before September 1st, as of July 1st, all property declared by the Act to be presumed abandoned and within four months after July 1st to turn over all property so reported to the Department of Revenue, except that if the owner or a person entitled thereto within the four months after July 1st had a written transaction of record in the books of the person or court making the report or can by other competent evidence before the Commissioner of Revenue clearly manifest knowledge of or claim to the property, it is not the duty of the person or court to surrender such property to the Department.

Thus, where a person had a demand deposit for unforeseen emergencies or carried a courtesy deposit, and where such deposits were as much as ten years old without written negotiations, additions or withdrawals, the bank under the Act would be required to report such deposits and if for any reason the depositor could not or did not within four months make some writing or an additional deposit or withdraw part of the deposit, then under the Act the bank would [fol. 11] be required under a 10% penalty to pay the money over to the State, even though the bank knew that the depositor was alive and still claiming the deposit.

G. Section 10 (Ky. St. 1613) attempts to relieve from liability the person transferring property to the Department of Revenue and provides that if this cannot be done, the Commonwealth shall reimburse such persons for all liability to the owner.

The attempt to relieve the person of liability is not effective and the provision that the Commonwealth shall reimburse the person is of doubtful, if any, value, since no provision is made as to how such claim for reimbursement shall be made or to whom it shall be made or by whom it shall be paid or how it can be enforced. In addition, this section can at any time at the will of the General Assembly be repealed.

H. Section 11 (Ky. St. 1614) provides for the presentation of claims to the Department of Revenue for property turned over to it. This section provides that the claimant "shall within fifteen (15) days after filing any claim" with the Department of Revenue publish notice of such claim in a newspaper of general *bona fide* circulation in the county in which the property was held before it was trans-

ferred to the Commonwealth and that if there be no such newspaper, notices shall be posted at the court house door and in three other conspicuous places in the county.

[fol. 12] Thus, under the Act the Commonwealth takes property without notice of any kind to the owner or claimant, whereas such owner or claimant before he can get it back is required to give widespread and conspicuous notice of his claim.

I. Section 12 (Ky. St. 1615) provides that if the claimant establishes his claim, the Commissioner of Revenue when the time for appeal or further legal procedure has expired, shall "authorize payment to him of a sum equal to the same amount which was paid into the treasury in compliance with this Act."

While the Commissioner may "authorize" payment, it is not made the duty of any person to make such payment nor is there any provision for the enforcement of such payment.

This section further provides that if a claimant is dissatisfied with the decision of the Commissioner of Revenue he may appeal from such decision to the Franklin Circuit Court and that "in any such proceeding before the Franklin Circuit Court the Commissioner of Revenue shall be made a party defendant and all other persons required by law to be made parties defendant or plaintiff and served with actual or constructive notice *in rem* or *quasi in rem* actions shall be so treated."

Thus, if a suit by the claimant is necessary to recover property the Act is careful to provide that service on all parties shall be made, whereas under Section 16 (Ky. St. [fol. 13] 1619) referred to hereinafter the Commonwealth can take such property by a mere claim and delivery suit and to which the owner or claimant is not made a party.

J. Section 13 (Ky. St. 1616) provides that whenever any property "which may be escheated" under this Act is in the hands of a United States Court, the Circuit Court in any county where such United States Court sits "shall have jurisdiction to ascertain whether an escheat has occurred and to enter a judgment of escheat in favor of the Commonwealth."

This section is pertinent in that it shows knowledge on the part of the State of the fact that a legal taking of property or escheat of it requires the ascertainment by a court of competent jurisdiction of "whether an escheat has oc-

curred" and the entry of "a judgment of escheat in favor of the Commonwealth."

The omission of any such requirement of court action, hearing and judgment concerning the taking of the other property which the Escheat Act of 1940 attempts to take under the other provisions of the Act referred to above shows that such other taking is illegal and unconstitutional.

K. Section 16 (Ky. St. 1619) provides that if any person refuses to voluntarily surrender intangible property as provided in Section 7 or 8 or if the agent of any court refuses to do so, "a proceeding may be brought on the relation of the Commissioner of Revenue as an equity action in [fol. 14] a court of competent jurisdiction to force such payment or surrender of property."

Such a suit is simply a claim and delivery suit and not a suit to ascertain the facts necessary to constitute an escheat.

Thus, under the Act the Commonwealth forcibly takes property by a mere claim and delivery suit without notice to the owner or claimant, whereas if the claimant attempts to get the property back from the Commonwealth, the Act is careful to provide who shall be the necessary defendants and for actual or constructive service on them.

This section further provides that if property is turned over to the Department of Revenue under Sections 7, 8 or 9 of the Act, the Commissioner of Revenue *may* at any time cut off the right of redemption.

L. Section 17 (Ky. St. 1620) provides that all money received by the Department of Revenue under the Act "shall be deposited with the State Treasurer and credited to the account of the General Expenditure Fund" with the proviso that 10% of such amount for the years 1940 and 1941 shall be taken from the deposit and turned over to the Department of Revenue for its own purposes.

Thus, under the Act, as to any payments made during the years 1940 and 1941 there is an immediate confiscation or forfeiture of 10% which the owner can never recover.

[fol. 15] It is the plan and purpose of the defendants and of the Commonwealth of Kentucky unless enjoined and restrained by this Court immediately and as necessity requires to spend any and all money turned over to the Department of Revenue or the State Treasurer under the Escheat Act of 1940 and not to segregate or set aside or

keep any part of such money as a trust or other fund for the benefit of the owners or claimants thereto.

M. Section 20 (1622-1) provides that any person who refuses to make a report required by the Act shall be guilty of a misdemeanor and fined from \$50.00 to \$200.00 or imprisoned from thirty days to six months, or both fined and imprisoned.

This section further provides that the Department of Revenue has power to require such reports and the surrender of the property by civil action in which case the person shall be required to pay a penalty of 10% of the amount, not to exceed \$500.00, and that any person bona fide contesting the Act may be relieved of fine or imprisonment by posting bond.

Thus, a person who has any kind of property which does or may belong to another person or in which such other person has or may have a claim, or against whom another person has or may have a claim for wages, etc., all depending on questions of both law and fact, is required by the Act under threat of fine, imprisonment and a 10% penalty to be judge and jury and not only report, but to pay over such [fol. 16] property to the Department of Revenue and all without notice to the owner or claimer of such property.

N. Under rules and regulations issued by the defendants herein, the State of Kentucky is attempting to collect unclaimed wages and other property as to which the Kentucky Statutes of Limitations have long since applied. That is, in the "Instructions" issued by the defendants herein, it is provided with reference to wages:

"* * * in reporting unclaimed wages, give the period of time the employee worked, such as 'unclaimed wages—June 1, 1910 to June 3, 1910.'"

Thus, the State of Kentucky and the defendants herein are attempting to go back to the beginning of time and confiscate any amount which any person has ever owed any other person and which amount has not been paid and regardless of whether or not the Kentucky Statutes of Limitation have already barred such claim and any property reported must under a 10% penalty be paid to the Department of Revenue.

A copy of said form of reporting abandoned property, together with the Instructions issued with reference thereto, is filed herewith as part hereof and marked Exhibit A.

The Kentucky Escheat Law of 1940 is very careful to repeal Ky. St. 1611, as follows, requiring notice, suit, publication, service, etc., etc., with reference to escheat:

"Sec. 1611. Recovery of land; parties; publication of notice.—The escheator shall institute proceedings in the name of the Commonwealth in the circuit court of the county in which land lies that has vested in the Commonwealth under the provisions of this chapter for the recovery of the same, and shall make defendants to such action all persons occupying the land, or claiming to own the same, or an interest therein known to him, and shall also cause notice of the institution of the action, together with a general description of the land, to be published for four weeks in a paper published in and having a general circulation in the state. Any person claiming an interest in the land may be made a party to the action, and the action and method of procedure shall, in all respects, be the same as in other cases for recovery of real property, except that it may be tried as an equity case."

The Kentucky Escheat Law of 1940 is very careful to *not* incorporate therein any such requirement of notice, suit, publication, service, etc., in order to effect an escheat.

As to plaintiff and the other national banks for who it sues, the Kentucky Escheat Act of 1940 (Ky. St. 1605a through 1622-1, both inclusive) is in violation of the national banking laws.

For ready reference the said Escheat Act of 1940 is attached hereto as an Appendix.

The persons required to make the report referred to in Section 8 (Ky. St. 1611) and to turn over the property referred to in Section 7 (Ky. St. 1610) above, including plaintiff and all State and national banks, are in a class and the questions involved are of a common and general interest to all persons in such class, and such persons and parties are so numerous as to make it impracticable to bring them all before the Court. Plaintiff and each of those for whom it sues have deposits and/or other property that

would or might come within the terms of the Act. The plaintiff, therefore, brings this action in its own behalf and in behalf of all State and national banks and of all other persons in said class and for the benefit of them all.

Said Escheat Act of 1940 is unconstitutional and void for the following reasons, among others, to-wit:

1. The Act is in violation of Article I, Section X, of the Constitution of the United States and of Section 19 of the Constitution of Kentucky in that it is a law impairing the obligation of contracts between the banks and their depositors.

2. The Act deprives the banks, and their depositors of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and in violation of Section 14 of the Kentucky Constitution, and it violates Sections 2 and 13 of the Kentucky Constitution for the following reasons:

(a) The banks, and other persons required to make reports and pay over to the State property or indebtedness, [fol. 19] presumed to have been abandoned, are required to determine at their peril many difficult questions of facts and law as to the application of the Act to various classes of persons, such as nonresidents, etc., and the banks, and other persons required to make such reports, are heavily penalized for failure to make such reports correctly; and they are required, at their own expense, to institute litigation, give bonds to secure the State and otherwise bear the expense not only of determining doubtful questions; but also in order to make up complicated reports, audit their records, etc., without having anything to gain for themselves and without even being permitted to charge the expense of investigation, auditing or litigation to the particular funds in question.

(b) The Act is essentially a revenue measure, the primary purpose of which is to obtain property and revenue for the State without making prior compensation therefor and it is not uniform upon all taxpayers as required by Kentucky Constitution, Section 171.

(c) The provision in the Act for repayment to the depositors and other persons whose property is confiscated by the State, and for indemnity to the persons required to

report and pay over such property to the State, are not sufficient to afford protection to such property owners or to the banks or to other persons required to report and pay over because (1) the amounts involved as to particular [fol. 20] property owners may be too small to justify making claims, publishing notices and engaging in litigation; (2) if the statute is invalid the right to indemnity and to a return of the property are likewise invalid; (3) the State may in the future fail to make appropriations for the return of such property or to provide indemnity; (4) the State may at any time repeal so much of the Act as gives a right to sue the State; and (5) the State of Kentucky is already indebted to the extent of the limit of indebtedness authorized by the Constitution of Kentucky, Section 49, to-wit, the sum of \$500,000, and any additional indebtedness incurred by the State will violate such constitutional provision.

The said Act is an attempt by the State of Kentucky to take the property of plaintiff and all others for whom it is suing for public use without due process of law and without just or any compensation therefor and in violation of the rights accruing to plaintiff and those for whom it sues by the Constitution of the State of Kentucky and by the Constitution of the United States, which rights are specifically set up and claimed by the plaintiff and those for whom it sues.

Said Act is an attempt by the State of Kentucky to deny to plaintiff and those for whom it sues the equal protection of the law in violation of the rights accruing to plaintiff and those for whom it sues by the Constitution of the State of Kentucky and by the Constitution of the United [fol. 21] States, which rights are specifically set up and claimed by the plaintiff and those for whom it sues.

Said Act is an attempt by the State of Kentucky to impair the obligations of contracts of plaintiff and those for whom it sues in violation of the rights accruing to plaintiff and those for whom it sues under the Constitution of the United States, which rights are herein specifically set up and claimed by the plaintiff and those for whom it sues.

An actual controversy exists between plaintiff and those for whom it sues and the defendants herein in that plaintiff and those for whom it sues contend that the said Act is unconstitutional, void and of no effect for the reasons hereinabove set out, and for other reasons, whereas the

defendants claim that said Act is valid and constitutional.

The defendants, unless enjoined and restrained by this Court, in order to coerce plaintiff and those for whom it sues to file the report provided for in Section 8 (Ky. St. 1611) above, and to turn over to it the money and other property referred to in Sections 7 and 8 (Ky. St. 1610 and 1611) above, without any judicial construction of the Escheat Act of 1940 and without any judicial determination as to whether such property can legally be taken from plaintiff and those for whom it sues by the State of Kentucky, will invoke and enforce against plaintiff and those for whom it sues the provisions of Section 20 of the Act (Ky. St. 1622-1) calling for fines up to \$200 and imprisonment up to six months and a 10% penalty and which said section imposes fines and penalties so grossly excessive and so ruinously expensive as to intimidate plaintiff and those for whom it sues in the legitimate operations of their business and to deny to plaintiff and those for whom it sues their day in court and to deprive plaintiff and those for whom it sues of their property without due process of law and to deny to plaintiff and those for whom it sues the equal protection of the law contrary to the Constitution of the State of Kentucky and contrary to the Fourteenth Amendment of the Constitution of the United States, all to the great and irreparable damage of plaintiff and those for whom it sues and for which they have no adequate remedy at law.

If each of the persons required to make the report under Section 8 (Ky. St. 1611) and to turn over property as provided in Sections 7 and 8 (Ky. St. 1610 and 1611) were required to file separate suits to determine the constitutionality of the Escheat Act of 1940, each of such suits would involve the same question. Therefore, it is necessary for plaintiff and those for whom it sues to go into a court of equity in a class or representative suit, both to avoid a multiplicity of suits and irreparable damages to each of them and the confiscation of their property.

The injunction sought in this bill in equity has never been asked for or refused by this or any other Court, judge or public officer.

[fol. 23] The compiling of the report called for by the defendants herein under the Escheat Act of 1940 will as to plaintiff and a very great many, if not all, of those for whom it sues, involve a very great deal of time, expense

and work, which will be wasted and of no value whatsoever if the Escheat Act of 1940 is, as plaintiff and those for whom it sues allege, unconstitutional.

A state bank under date of August 21, 1940, wrote to the defendant, H. Clyde Reeves, as follows:

"In view of the fact that the validity of the escheat law is to be tested which will require some time, we would appreciate it very much if you would grant to us an extension of time for filing the report required by law."

The said defendant, Reeves, and the Department of Revenue declined to grant such requested extension in the following reply dated August 22, 1940:

"The Department of Revenue feels that the contest of the escheats law is not sufficient reason for the granting of an extension of time for the filing of the report due thereunder.

"If any other valid and sufficient reason can be given for the Department's granting an extension to you, we will be glad to take it under consideration."

The defendants, other than the Attorney General, have announced that similar requests by any one for extensions of time until the validity of the 1940 Escheat Act can be determined, will be similarly declined.

[fol. 24] Wherefore, plaintiff and those for whom it sues pray:

1. That an injunction may issue herein perpetually enjoining and restraining the defendants and each of them, their successors in office and all other persons acting by, through or under them

(a) from requiring plaintiff and any of those for whom it sues to file with the Department of Revenue or the Commissioner of Revenue or any other department or person on or before September 1, 1940, or on or before any other time the report provided for in Section 8 of the Kentucky Escheat Act of 1940 (Ky. St. 1611);

(b) from requiring plaintiff or any of those for whom it sues to turn-over or pay to the Department of Revenue or any other department or person all or any of the property referred to in the Kentucky Escheat Act of 1940, being Ky. St. 1605a through 1622-1;

(c) from instituting any action, civil or criminal, against the plaintiff or any of those for whom it sues to require them to make said report or turn over the property called for in the Kentucky Escheat Act of 1940, being Ky. St. 1605a through 1622-1.

2. That a preliminary injunction be granted *pendente lite* for those things for which a perpetual injunction is sought [fol. 25] restraining and enjoining the defendants and each of them, their successors in office and all other persons acting, by, through or under them, until further order of this Court,

(a) from requiring plaintiff and any of those for whom it sues to file with the Department of Revenue or the Commissioner of Revenue or any other department or person on or before September 1, 1940, or on or before any other time the report provided for in Section 8 of the Kentucky Escheat Act of 1940 (Ky. St. 1611);

(b) from requiring plaintiff or any of those for whom it sues to turn over or pay to the Department of Revenue or any other department or person all or any of the property referred to in the Kentucky Escheat Act of 1940, being Ky. St. 1605a through 1622-1;

(c) from instituting any action, civil or criminal, against the plaintiff or any of those for whom it sues to require them to make said report or turn over the property called for in the Kentucky Escheat Act of 1940, being Ky. St. 1605a through 1622-1.

3. That upon final hearing The Court adjudicate the rights of the parties hereto and declare that the Kentucky Escheat Act of 1940, being Ky. St. 1605a through 1622-1, is unconstitutional, void and of no effect.

[fols. 26-27] 4. Plaintiff prays for its costs herein and all further proper, general and equitable relief to which plaintiff and those for whom it sues may be entitled.

Charles W. Milner, Leo T. Wolford, Louisville, Kentucky, Attorneys for Plaintiff.

Crawford, Middleton, Milner & Seelbach, Bruce & Bullitt,
of Counsel.

August, 1940.

[fol. 28]
Revenue Form 411
8-40 10M

EXHIBIT A TO BILL AND PETITION

Commonwealth of Kentucky
Department of Revenue
Frankfort
Report of Abandoned Property
As of July 1, 1940

Name and address of reporting agent:	Date	Leave Blank	
	No. Ind. Reports		
	Remittance		
1. Name, last known address and county of residence of person or estate.	2. Description of Property Reported	3. Date Presumed Abandoned	4. Value

(Attach separate sheets of paper of the same size if additional space is required or explanation is necessary relative to a particular account.)

Affidavit

The affiant, _____, states that this report and the attached sheets list all the property now required to be reported as presumed abandoned in accordance with sections 1605a-1622, inclusive, Baldwin's 1940 Supplement to Carroll-Kentucky Statutes.

Signature

Title

Subscribed and sworn to before me by _____ this _____ day

of _____, 194 _____

Signature

Title

[fol. 29]

Instructions

This report is required to be made in compliance with sections 1605²a to 1622-1, inclusive, Baldwin's 1940 Supplement to Carroll's Kentucky Statutes, and should be completed pursuant to the following instructions:

Column 1.—Insert the name of the owner of the property or the estate, the last known address of the owner or estate, and the county of residence of the owner or estate (county not required for non-residents of the Commonwealth).

Column 2.—The description of the property must be reported in this column. Examples: For bank accounts, list the type of account, such as "time deposit" or "demand deposit"; for stocks and bonds, list the series, the classification, serial number (if any), such as "Union Pacific Railroad Company stock, 4 per cent preferred," "Anaconda Copper Mines, debentures 4½'s, 256891, 1910 series;" in reporting service deposits, give the type of deposit, such as "gas service deposits," "electric service deposit"; in reporting unclaimed wages, give the period of time the employee worked, such as "unclaimed wages—June 1, 1910, to June 3, 1910." All personal property which has been liquidated should also be fully described. For all other properties give an adequate description. Contracts, agreements or court orders should be included as a part of the description.

Column 3.—"Date presumed abandoned" is interpreted to mean, except for banks, the date the abandoning owner or legal claimant was entitled to recover the property or its equivalent. (For example, in the case of service deposits, the date would be the first date the money could have been legally claimed; for wages or salaries, it would be the date on which the payment should have been made.) Banks must give the date the last record was made at the instance of the depositor.

Column 4.—The value of the property as of July 1 should be listed. If unlisted stocks or bonds are reported, estimate their value as of July 1. In reporting money, such as bank deposits, unclaimed wages, service deposits, etc., the amount of such deposit and the accrued interest to date should be shown separately.

Property escheated pursuant to sections 1606, 1607 and 1609, Baldwin's 1940 Supplement to Carroll's Kentucky

Statutes, should be reported by writing a letter to the Department of Revenue on or before September 1, listing the information required in section 1607. Do not report such property on Revenue Form 411.

This report must be filed with the Department of Revenue in Frankfort, Kentucky, on or before September 1 following the July 1 as of which the property was presumed to have been abandoned.

[fol. 30]

APPENDIX

Acts of the General Assembly, 1940, Chap. 79 (H. B. 321).
P. 333

“AN ACT relating to all classes of property actually or presumptively subject to escheat; providing the terms upon which presumption of abandonment of property and presumption of the death of persons shall be determined; providing how and when said property may be escheated to the Commonwealth of Kentucky; providing for the reduction of all such property to cash, transferring the possession of same to the Treasurer of Kentucky; providing how any person who is legally entitled thereto may recover same from the Treasurer; providing that any person transferring property to the Commonwealth as required by this Act shall be relieved of liability to the owner thereof or reimbursed for any liability or damage incurred by complying with this Act; defining certain words; providing for reports and examination of records; providing for the administration and enforcement of this Act, and for an Assistant Attorney General as incident thereto; providing fines, penalties, and imprisonment for failure to comply with this Act; providing that if any provision of this Act shall be held unconstitutional that it is the Legislative intent that all other provisions thereof shall remain in force and effect; repealing sections 1610 to 1623, inclusive of Carroll's Kentucky Statutes, Baldwin's 1936 Revision; repealing all Acts and parts of Acts in conflict with this Act; repealing Chapter 168, Acts of the Regular Session of the 1938 General Assembly of the Commonwealth of Kentucky; and repealing, amending and reenacting sections 1606, 1607, 1608, and 1609 of Carroll's Kentucky Statutes Baldwin's 1936 Revision.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

“Sec. 1. That sections 1610 to 1623 inclusive of Carroll’s Kentucky Statutes, 1936 edition, and Chapter 168, Acts of [fol. 31] the Regular Session of the 1938 General Assembly be, and the same are hereby repealed.

“Sec. 2. (Ky. St. 1605a) Whenever used in this Act, unless the context requires otherwise, the word ‘person’ shall mean and include any individual, state and national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

“Whenever used in this Act, unless the context requires otherwise, the word ‘claim’ shall mean to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved.

“Sec. 3. That section 1606 of Carroll’s Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted so that when amended and re-enacted it shall read as follows:

(1606) “That part of estates or property having a situs in this Commonwealth, not disposed of by will of persons who have died, or may hereafter die without heirs or distributees entitled to the same; or which have been or may hereafter be devised to any person, or any heir or distributee or devisee of such person or of the testator, who has not claimed the same or shall not claim the same within eight (8) years after such death, shall vest in the Commonwealth, subject to all legal and equitable demands on same. All such property shall be liquidated and the proceeds thereof, less costs, fees, and expenses incidental to all legal proceedings of such liquidation shall be paid to the Department of Revenue. Any estates or property except a perfect title to a corporeal hereditament, which estates or property have been abandoned by the owner thereof, shall also vest in the Commonwealth, subject to all legal and equitable demands on same. All such property shall be liquidated and the proceeds thereof, less costs, fees, and [fol. 32] expenses incidental to all legal proceedings of such liquidation shall be paid to the Department of Revenue.

"Sec. 4. That section 1607 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted so that when amended and re-enacted it shall read as follows:

(1607) "The personal representatives of persons, whose estates or a part of whose estates are not distributed by will, and who died without heirs or distributees entitled to same, shall settle their accounts within one (1) year after qualifying as such and pay over to the Department of Revenue the proceeds of all personal estate, first deducting the proper legal liabilities of the estate.

"(1) If the whole personal estate cannot be settled and the accounts closed within one (1) year, the settlement as far as practicable, shall then be made and the proceeds paid over to the Department of Revenue, and the residue shall be so settled and paid over as soon thereafter as can be properly done.

"(2) The personal representative shall take possession of the real estate of such decedent not disposed of by his will, and rent out the same from year to year until it is otherwise legally disposed of, and pay the net proceeds to the Department of Revenue.

"(3) The personal representative shall also make out and transmit to the Department of Revenue a description of the quantity, quality, and estimated value of such real estate and its probable annual profits.

"Sec. 5. That section 1608 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted, so that when amended and re-enacted it shall read as follows:

[160.33]. (1608) "If any devisee or his heirs, advisee or distributee, or any heir or distributee of a testator has failed or shall hereafter fail for eight (8) years to claim his legacy the personal representative of such testator or other person having the same in possession shall, after deducting the legal liabilities thereon, pay and deliver over such legacy, whether the same be real or personal estate, and the net profits thereof to the Department of Revenue.

"Sec. 6. That section 1609 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted, so

that when amended and re-enacted it shall be read as follows:

(1609) "When any person owning property or estates having a situs in this Commonwealth is not known to be living for seven (7) successive years, and neither said owner, his heirs, devisees, or distributees can be located ~~on~~ ^{proved} to have been living for seven (7) successive years, such person shall be presumed to have died without heirs, devisees, or distributees, and both his real and personal estate shall be liquidated and the proceeds, less costs incident to the liquidation and any legal proceedings, and less the liabilities which have been properly claimed and approved against same, shall be paid to the Department of Revenue.

(1610) "Sec. 7. When the owner or owners (whether such ownerships be legal, beneficial, equitable, or otherwise) of deposits payable on demand in any bank or trust company (either state or national) within this Commonwealth, have not or shall not within ten (10) successive years next preceding the date as of which reports are required to be made by section 8 of this Act, (a) negotiated in writing with the bank or trust company in respect thereto, or (b) been credited with interest on the pass book or certificate of deposit on his or their request, or (c) had a transfer, ^[fol. 34] disposition of interest, or other transaction noted of record in the books or records of such bank or trust company, or (d) increased or decreased the amount of the deposit, such deposit and the interest thereon shall be presumed abandoned.

"When the owner or owners (whether such ownerships be legal, beneficial, equitable, or otherwise) of deposits other than those payable on demand in any bank or trust company (either state or national) within this Commonwealth, have not or shall not within twenty-five (25) successive years next preceding the date as of which reports are required to be made by section 8 of this Act, (a) negotiated in writing with bank or trust company in respect thereto, or (b) been credited with interest on the passbook or certificate of deposit on his or their request, or (c) had a transfer, disposition of interest, or other transaction noted of record in the books or records of such bank or trust company, or (d) increased or decreased the amount of the deposit during

said period, such deposits and the interest thereon shall be presumed abandoned.

"All deposits of money, stocks, bonds, or other credits of any kind whatsoever made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm and the increments thereof, shall be presumed abandoned unless claimed by the person entitled thereto within ten (10) years after the occurrence of such event as would obligate the holder or depository to return the same or the equivalent thereof to the proper owner or claimant.

"All dividends, stocks, and bonds and the increments thereof, all monies and credits and the increments thereof, all claims for monies and credits and the increments thereof, and all intangible personal estate or property whatsoever and the increments thereof, held within this Commonwealth [fol. 35] by any person for the benefit of another person shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within ten (10) years from the time the holder, trustee, debtor, or other responsible person became obligated to return the same or the equivalent thereof to the proper owner or claimant. If the increments or benefits payable on any instrument are not claimed within the time and manner prescribed in this paragraph, the instruments or evidence of the debt or obligation shall likewise be presumed abandoned.

"All estate or property paid into any court of this Commonwealth for distribution and the increments thereof shall be presumed abandoned if not claimed within five (5) years after the estate was so paid into court, or as soon after said five (5) year period as all claims filed in connection therewith shall have been disallowed or settled by the court.

"None of the provisions of this Act shall apply to bonds of counties, cities, school districts, or other tax levying subdivisions of this Commonwealth.

(1611) "Sec. 8. It shall be the duty of all state and national banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or other capacity coming within the purview of section 7 of this Act, to report annually to the Department of Revenue as of July 1, all property held by them declared

by this Act now to be presumed abandoned, and all property which shall hereafter become presumed abandoned under the provisions of this Act. The report shall be filed in the offices of the Department of Revenue in Frankfort on or before September 1 of each year for the preceding July 1; and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the Department of Revenue may require for the administration of this Act. Such person or court as may have made report of any estate or property presumed abandoned, as required in this Act, shall, within four (4) months after July 1, turn over to the Department of Revenue all property so reported; except, that if the person making such report, or any other person or persons are able to prove by competent evidence on hearing before the Commissioner of Revenue that the owner or person entitled to the property has subsequently within said four (4) months transacted business resulting in writing of record in the books of the person or court making the report, which shows the owner or person entitled to the estate or property has knowledge thereof and still claims his legal or equitable right thereto or has by other competent evidence clearly manifested such knowledge or claim, it shall not be the duty of the person or court making such report or in possession of such property to surrender it to the Department of Revenue.

(1612) "Sec. 9. Any intangible personal estate or property required by sections 7 and 8 of this Act to be liquidated so as to permit payment thereof to the Department of Revenue, shall be surrendered to the Department of Revenue and sold by the Department of Revenue at public sale at Frankfort, or in such other city in the Commonwealth as may in its judgment afford the most favorable market for the particular property involved, to the highest bidder; provided that it may decline the highest bid and reoffer the property for sale if it deems the price offered insufficient. Such sale shall be advertised at least one week before the date of the sale in a newspaper of general bona fide circulation in the county where said property was found or abandoned, and in the county where the sale is to be made, and the sale shall be held at the courthouse door.

[fol. 37] (1613) "Sec. 10. Any person who shall transfer to the Department of Revenue, property to which the Com-

monwealth is entitled under the provisions of this Act, is hereby relieved of any liability to the owner of such property arising from such transfer; however, if any such person cannot be relieved of such liability by the provisions of this section, the Commonwealth shall reimburse such person for all liability to the owner of the property or estate or damage incurred by reason of compliance with the provisions of this Act.

(1614) "Sec. 11. Any person claiming an interest in estates or property paid or surrendered to the Commonwealth in accordance with the provisions of sections 3, 4, 5, or 6 of this Act, who was not actually served with notice and who did not appear, and whose claim was not considered during the action or at the proceedings which resulted in the payment of same to the Commonwealth, may within five (5) years after the judgment file his claim thereto with the Department of Revenue.

"Any person claiming an interest in estates or property paid or surrendered to the Commonwealth in accordance with sections 7, 8, or 9 of this Act, which was not subsequently adjudged under the procedure set out in section 16 of this Act to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee, or other person entitled under the laws of this Commonwealth relating to wills, descent and distribution, to take the legal or equitable title to such estate or property, may file his claim thereto at any time after same was paid to this Commonwealth.

"The claimant shall within fifteen (15) days after filing any claim permitted under this section publish notice of such claim in a newspaper of general bona fide circulation in the county in which the property was held before being transferred to the Commonwealth as herein provided. If there be no such newspaper, the claimant shall post such [fol. 38] notice at the courthouse door and in three other conspicuous places in said county, and shall file proof of such publication or posted notice with the Department of Revenue. No such claim shall be allowed until fifteen (15) days after proof of such notice is received by the Department of Revenue at its offices in Frankfort.

(1615) "Sec. 12. It shall be the duty of the Commissioner of Revenue to consider any claim and/or defense permitted

to be filed before it and to hear evidence in respect thereto. If the claimant establishes his claim, the Commissioner of Revenue shall, when the time for appeal or further legal procedure herein provided has expired, authorize payment to him of a sum equal to the same amount which was paid into the Treasury in compliance with this Act. The decision shall be in writing and shall state the substance of the evidence heard by the Commissioner of Revenue if a transcript thereof be not kept and such decision shall be a matter of public record.

"Any person, petitioner, or claimant dissatisfied with the decision of the Commissioner of Revenue may within sixty (60) days, appeal from such decision to the Franklin Circuit Court or file an action in said court to vacate such decision. In either event the proceedings shall be de novo, and no transcript of the record before the Commissioner of Revenue shall be required to be kept unless requested by the claimant. In any such proceeding before the Franklin Circuit Court, the Commissioner of Revenue shall be made a party defendant, and all other persons required by law to be made parties defendant or plaintiff and served with actual or constructive notice in rem or quasi in rem actions shall be so treated. Any party adversely affected by the decision of the Franklin Circuit Court may appeal to the Kentucky Court of Appeals in the manner now generally provided by law, but such appeal must be commenced within sixty (60) days after the judgment. However, the Commonwealth shall in no event be required to make a supersedeas bond. The provisions of this section which relate to the decision of the Commissioner of Revenue and appeals therefrom shall also apply to a decision of the Commissioner rendered under authority of section 8 of this Act requiring payment to the Department of Revenue over the protest of the holder or claimant of the property.

(1616) "Sec. 13. Whenever any estate or property, which may be escheated under the provisions of this Act by reason of actual abandonment, or death and for presumption of death of the owner without an heir, distributee, devisee or other person entitled to take the legal or equitable title to such estate or property under the laws of this Commonwealth relating to wills, or descent and distribution, has or shall hereafter be deposited with, or in the custody of, or under the control of any court of the United States in

and for any district within this Commonwealth, or in the custody of any depository, clerk or other officer of such court, or shall have been surrendered by such court or its officers to the United States Treasury, the circuit court of this Commonwealth in any county in which such court of the United States sits, shall have jurisdiction to ascertain whether an escheat has occurred, and to enter a judgment of escheat in favor of the Commonwealth. Provided, however, this section shall not be construed as authorizing a judgment to require such courts, officers, agents, or depositories to pay or surrender such funds to the Commonwealth on a presumption of abandonment as provided in sections 7 and 8 of this Act.

(1617) "Sec. 14. To aid in the enforcement and administration of the provisions of this Act, the Attorney General shall, with the approval of the Governor, appoint an additional Assistant Attorney General, having at least the [fol. 40] qualifications of the Sixth Assistant Attorney General, and assign him to the Department of Revenue. It shall be the special duty of such Assistant Attorney General to represent the Commonwealth at the hearings required by this Act to be held before the Commissioner of Revenue to consider claim filed pursuant to section 11 of this Act; to advise the Department of Revenue, county attorneys, and all other inquiries, with respect to questions arising under the provisions of this Act; to aid in the prosecution of all other actions or proceedings authorized by this Act when so directed by the Commissioner of Revenue or the Attorney General; and to perform such other duties as are imposed on him by any provision of this Act. Provided, however, his opinions shall be subject to the approval of the Attorney General in the same manner as is such work of other Assistant Attorneys General now established by law, and he shall also have the other ordinary powers and duties of an Assistant Attorney General.

"He shall receive a salary not exceeding four thousand dollars (\$4,000) a year, to be fixed by the Attorney General and the Commissioner of Revenue as provided by law, which shall be paid on authorization of the Commissioner of Revenue in the same manner as employees of the Department of Revenue are generally paid.

(1618) "Sec. 15. All legal proceedings to enforce sections 3, 4, 5, and 6 of this Act shall be instituted on the relation of the Commissioner of Revenue.

"It shall be the duty of the county attorney of a county in which any estate or property is located, coming within the purview of sections 3, 4, 5, or 6 of this Act, to institute such legal proceedings as are necessary to enforce the provisions of said sections and to recover such sums as are [fol. 41] due the Commonwealth thereunder. The petition and all pleadings necessary to be filed in such proceedings shall be on the relation of the Commissioner of Revenue and shall be sent to the Commissioner of Revenue for his signature and approval. The petition shall be accompanied by an affidavit of the county attorney, stating the facts on which it is based. For all other pleadings, there shall be a statement by the county attorney of the reason for the particular pleading.

"On any action or proceeding filed by a county attorney under the provisions of this Act, it shall be the duty of the Assistant Attorney General, provided for in section 14 of this Act, to offer assistance and suggestions to the county attorney in the preparation of the petition or any pleadings, and to revise and correct same as he may deem necessary, subject to the ultimate approval of the Commissioner of Revenue, when he is required to sign same.

"If the estate or property of a person coming within the purview of sections 3, 4, 5, or 6 of this Act is located in two or more counties, all such property may be included in one action or proceeding; provided, however, that the county attorneys of all counties in which such property is located may join in the prosecution of the action or proceeding, and their fees shall be determined by the amount of money derived from the property located within their respective count is when possible to determine such figure; otherwise, the courts shall determine their fees by equitable apportionment in accordance with the value of the property which is located in their respective counties.

"If the county attorney performs all the duties imposed upon him by this Act relating to enforcement of the provisions of sections 3, 4, 5, or 6, he shall be entitled to a fee of fifteen per cent (15%) of any sum recovered in such proceeding, except that the county attorney's fee shall be [fol. 42] limited to five per cent (5%) on intangible property recovered in excess of one thousand dollars (\$1,000).

"In the event that a county attorney declines to perform the duties imposed upon him by this Act, they may be performed by the Commissioner of Revenue and the county attorney shall not be entitled to any fee. The Commissioner

may, when he deems it to the best interest of the Commonwealth, institute any action authorized by this Act to be brought by the county attorney, or join the county attorney in the active prosecution of any such action. The county attorney shall be entitled to his fee in either instance if he does his duty.

“Pending the outcome of an action or court proceeding, the court may make such disposition of the land or tangible personal property involved as may seem best from the standpoints of use, rents, interest, and profits. In the event the use of the property is given to the claimant by the court, such claimant shall be held accountable for returns and profits arising from such use, if the Commonwealth be successful in such proceeding.”

(1619) “Sec. 16. In the event any person refuses to pay or surrender voluntarily intangible estate or property to the Department of Revenue, as provided in sections 7 or 8 of this Act, or if the agent of any court refuses so to do, a proceeding may be brought on the relation of the Commissioner of Revenue as an equity action in a court of competent jurisdiction to force such payment or surrender of property, and all property subject to said sections 7 and 8 may be listed and included in a single action.

“If intangible estates or property are turned over to the Department of Revenue on presumption of abandonment, in accordance with sections 7, 8, or 9 of this Act, the Commissioner of Revenue may at any subsequent time institute [fol. 43]. proceedings in a court of competent jurisdiction to establish conclusively that such estate or property was actually abandoned, or that the owner thereof is dead and there are no heirs, devisees, distributees, or any other persons entitled to succeed to the title of same.

“In the event a particular person or persons may have property coming within the purview of sections 3, 4, 5, or 6 of this Act, and also sections 7 or 8 of this Act, the actions herein required to be brought by the county attorney and the Commissioner of Revenue may be joined, but joinder is not required, and if separate actions shall be brought, they shall not be considered as coming within the rule against splitting a cause of action. The county attorney shall not be charged with the duty of enforcing sections 7, 8, 9, and 12 of this Act.

“The procedure for any and all actions or proceedings permitted or necessary under this Act to be filed in a court

of competent jurisdiction shall be the same as that now provided in Carroll's Kentucky Civil Code of Practice, unless provided differently herein, except that all such actions or proceedings shall be filed as equity actions.

(1620) "Sec. 17. All money received by the Department of Revenue under the provisions of this Act shall be deposited with the State Treasury and credited to the account of the General Expenditure Fund; provided, however, that ten per cent (10%) of such sum so received during the fiscal year beginning July 1, 1940, and ten per cent (10%) of such sum so received during the fiscal year beginning July 1, 1941, shall be added to and made a part of the appropriation available to the Department of Revenue for the respective fiscal years. After June 30, 1942, the legislature shall make provision for the administration of this Act in the regular budgetary appropriation made for the Department. [fol 44] All the expense necessary and required to be paid by the Commonwealth in administering and enforcing this Act shall be paid, out of the funds available to the Department of Revenue, and such expenses shall be paid in the same manner as other claims upon the Commonwealth are paid.

"The county attorney shall act as agent of the Department of Revenue for the collection of all judgments recovered in actions prosecuted by him under the provisions of this Act and he shall deduct the fee allowed him for his services performed pursuant to this Act, and promptly remit such collections to the Department of Revenue, with such information relating thereto as the Department may require.

(1621) "Sec. 18. Any action permitted by this Act to be brought by the Commonwealth must be brought within fifteen (15) years from the effective date of this Act or from the time when the cause of action accrued, whichever is the later date.

(1622) "Sec. 19. Any person under disability affected by this Act shall have five (5) years after the disability is removed in which to take any action or procedure or make any defense allowed to one sui juris.

(1622-1) "Sec. 20. The Department of Revenue, through its employees, is also authorized to examine all records of state and national banks or trust companies, corporations, companies, partnerships, agencies, and persons where there

is reason to believe that there has been or is a failure to report property which should be reported under the provisions of this Act.

"The Commissioner of Revenue shall have authority to promulgate such reasonable rules and regulations as are necessary for the enforcement of this Act, and to govern hearings provided in this Act to be held before him. Provided, however, he may delegate in writing to any regular employee of the Department of Revenue authority to perform any of the duties imposed on him by this Act except [fol. 45] ing the promulgation of rules and regulations.

"Any person, or representative thereof refusing to make any report as required by this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars (\$50) or more than two hundred dollars (\$200), or imprisoned not less than thirty (30) days or more than six (6) months, or both so fined and imprisoned. The Department of Revenue shall also have authority, as herein provided, to require such reports, or the surrender of such property, by civil action, including an action in the nature of a bill of discovery, in which case such person shall be required to pay a penalty equal to ten per cent (10%) of all amounts which he may ultimately be required to surrender, but in no event shall said penalty exceed five hundred dollars (\$500).

"Any person bona fide contesting the applicability of this Act to him may be relieved of the threat of any fine or penalty by posting a compliance bond in an amount and of surety sufficient to the court.

"Sec. 21. All Acts and parts of Acts in conflict with this Act are, to the extent of such conflict, hereby repealed.

"Sec. 22. It is the intent and purpose of the General Assembly of this Commonwealth of Kentucky to enact each and every provision of this Act separately, so that in the event the courts for any reason should hold any provision thereof void, or the application of any provision thereof void, then all other provisions or the application of any or all other provisions shall be deemed to remain in full force and effect; and it is hereby expressly declared that the General Assembly would have enacted any part or provisions of this Act, irrespective of any other part or provision thereof.

Approved March 1, 1940, by

Governor Johnson."

[fol. 46]

IN FRANKLIN CIRCUIT COURT

[Title omitted]

NOTICE OF MOTION FOR TEMPORARY INJUNCTION—Filed Aug.
27, 1940

The defendants, H. Clyde Reeves, individually and as Commissioner of Revenue of the State of Kentucky and a member of the Kentucky Tax Commission, C. M. C. Porter and R. L. McFarland, individually and as Associate Commissioners of Revenue of the State of Kentucky and as members of the Kentucky Tax Commission, and Hubert Meredith, individually and as Attorney General of the State of Kentucky, and each of them, will take notice that on Tuesday, August 27, 1940, at 10 A. M. in the Bourbon Circuit Court room at Paris, Kentucky, plaintiff and those for whom it sues will move the Judge of the Franklin Circuit Court to grant a temporary injunction as per copy of such motion hereto attached.

Charles W. Milner, Leo T. Wolford, Attorneys for
Plaintiff.

Notice accepted. Earl S. Wilson, Asst. Atty. General,
Atty. for Defendants.

[fol. 47]

IN FRANKLIN CIRCUIT COURT

[Title omitted]

MOTION FOR TEMPORARY INJUNCTION,—Filed Aug. 27, 1940

Plaintiff and those for whom it sues move the Court upon their verified Bill of Complaint herein and the affidavit therein contained, to grant a temporary injunction pendente lite for those things for which a perpetual injunction is sought, restraining and enjoining the defendants and each of them, their successors in office and all other persons acting by, through or under them, until further order of this Court.

(a) from requiring plaintiff and any of those for whom it sues to file with the Department of Revenue or the Commissioner of Revenue or any other department or person on or before September 1, 1940, or on or before any other

time the report provided for in Section 8 of the Kentucky Escheat Act of 1940 (Ky. St. 1611);

[fol. 48] (b) from requiring plaintiff or any of those for whom it sues to turn over or pay to the Department of Revenue or any other Department or person all or any of the property ~~referred to in~~ the Kentucky Escheat Act of 1940, being Ky. St. 1605 through 1622-1;

(c) from instituting any action, civil or criminal, against the plaintiff or any of those for whom it sues to require them to make said report or turn-over the property called for in the Kentucky Escheat Act of 1940, being Ky. St. 1605a through 1622-1.

Charles W. Milner, Leo T. Wolford, Attorneys for Plaintiff.

[fol. 49] IN FRANKLIN CIRCUIT COURT

[Title omitted]

ORDER GRANTING TEMPORARY INJUNCTION—Aug. 27, 1940

This cause coming on to be heard on the motion of plaintiff and those for whom it sues for a temporary injunction pendente lite and the Court having considered the petition and affidavit therein contained and the Court being advised,

It Is Ordered, Adjudged And Decreed that a temporary injunction issue as follows:—

1. That the defendants, H. Clyde Reeves, individually and as Commissioner of Revenue of the State of Kentucky and a member of the Kentucky Tax Commission, C. M. C. Porter and R. L. McFarland, individually and as Associate Commissioners of Revenue of the State of Kentucky and as members of the Kentucky Tax Commission, and Hubert Meredith, individually and as Attorney General of the State of Kentucky, and each of them, their successors in office and all other persons acting by, through or under [fol. 50] them, be and they are severally enjoined until further order of this Court from

(a) requiring plaintiff and any of those for whom it sues to file with the Department of Revenue or the Commissioner of Revenue or any other department or person on or before

September 1, 1940, or on or before any other time the report provided for in Section 8 of the Kentucky Escheat Act of 1940 (Ky. St. 1611);

(b) requiring plaintiff or any of those for whom it sues to turn over or pay to the Department of Revenue or any other department or person all or any of the property referred to in the Kentucky Escheat Act of 1940, being Ky. St. 1605a through 1622-1;

(c) instituting any action, civil or criminal, against the plaintiff or any of those for whom it sues to require them to make said report or turn over the property called for in the Kentucky Escheat Act of 1940, being Ky. St. 1605a through 1622-1.

2. That before this temporary injunction shall go into effect the plaintiff shall file with the Clerk of this Court bond with good and sufficient surety to be approved by the Judge of this Court in the penal sum of \$100.00 in form to be approved by the Judge of this Court, conditioned upon the proper payment to the defendants of all costs and damages which they or any of them may sustain by reason of the temporary injunction issued herein should it be determined and adjudicated upon final hearing that same was wrongfully issued and should not have been granted.

W. B. Ardery, Judge.

[fol. 50a] Bond on Injunction for \$100.00 filed Aug. 27, 1940 omitted in printing.

[fol. 51] IN FRANKLIN CIRCUIT COURT

[Title omitted]

DEMURRER—Filed September 26, 1941

Come the defendants and each of them and demur generally to plaintiff's petition herein because said petition fails to state a cause of action against the defendants, or either of them.

Wherefore, the defendants and each of them pray the judgment of the Court upon this general demurrer.

Hubert Meredith, Attorney General; A. E. Funk, Assistant Attorney General; Earl S. Wilson, Assistant Attorney General, Attorneys for Defendants.

[fol. 52]

IN FRANKLIN CIRCUIT COURT

[Title omitted]

ORDER OVERRULING DEMURRER—September 26, 1941

This cause coming on to be heard on defendants' demurrer to plaintiffs' petition and briefs having been submitted and oral argument having been heard and the Court being advised, it is hereby ordered and adjudged:

1. That said demurrer be overruled; and
2. That the defendants, having signified in open Court a desire to plead further, are hereby given fifteen days in which to further plead.

W. B. Ardery, Judge.

[fol. 53]

IN FRANKLIN CIRCUIT COURT

[Title omitted]

MOTION TO STRIKE PARTS OF PETITION—Filed September 26, 1941

Come the defendants and each of them and move the Court to strike from plaintiff's petition the following language:

1. All of the last paragraph on page 6 ending on page 7 just before the beginning of Paragraph F of said petition and all of the footnote at the bottom of page 6 of the printed petition.
2. All of the last paragraph on page 7 and ending on page 8 just before paragraph G of the printed petition.
3. All of the first paragraph on page nine of the printed petition.
4. All of the third paragraph, fourth paragraph and fifth paragraph on page 9 and ending on page 10 at the beginning of Paragraph J, of the plaintiff's petition.
5. All of the second paragraph and the third paragraph on page 10 of the petition.
6. All of the first, second, third and fifth paragraphs on page 11 of the printed petition.

[fol. 54] 8. All of the first and third paragraphs on page 12 of the printed petition, ending on page 13 at the beginning of Paragraph N.

9. All of the second paragraph on page 13 of the printed petition.

Defendants and each of them state that the paragraphs above mentioned are irrelevant and incompetent and do not in any way form a basis for an action against the defendants or either of them.

Wherefore, defendants and each of them pray that said paragraphs and each of them be stricken from the petition.

Hubert Meredith, Attorney General; A. E. Funk,
Asst. Attorney General; Earl S. Wilson, Asst. At-
torney General.

[fol. 55] IN FRANKLIN CIRCUIT COURT

[Title omitted]

ANSWER—Filed October 15, 1941

Come the defendants and each of them, and without waiving their demurrer heretofore filed, but still insisting upon same, and for answer to so much of plaintiff's petition as they are advised and deem it necessary for them to answer, deny that under the provisions of section three (Carroll's Kentucky Statutes, section 1606, 1940 Supplement) of the Acts of 1940, title to property having a situs in this State shall vest in the Commonwealth of Kentucky without notice or hearing or an opportunity to be heard; deny that the property of persons shall vest in the Commonwealth of Kentucky where said persons have died without heirs or distributees; deny that any property having a situs in this State which has been devised and unclaimed for eight years shall vest in the Commonwealth of Kentucky without a notice or hearing or an opportunity to be heard by persons claiming an interest therein; deny that property having a situs in this State or estates (other than a corporeal hereditament) which have been abandoned shall vest in the Commonwealth without notice or hearing or opportunity to be heard; The defendants and each of them further deny that no provision is made as to who determines the facts

[fol. 56] on which such escheat or vesting of title in the Commonwealth is made; deny that no requirement is made for any judicial proceeding or any notices to the owner of his heirs that the State is proposing to escheat his property; deny that no provision is made as to who takes possession of the property or who liquidates it in order to pay the proceeds to the Department of Revenue; deny that the Act contains no provisions as to whom or by whom such property is or may be legally disposed of.

Defendants and each of them deny that in the case of all deposits, claims, etc., except those in banks, the Act provides for an immediate presumption of abandonment and escheat unless the owners defeats the presumption by making claim within a certain time.

The defendants and each of them further deny that where a person has a demand deposit for unforeseen emergencies or has a courtesy deposit or where such deposits are as much as ten years old without written negotiations, additions or withdrawals, or if for any reason the depositor could not or did not make some writing or an additional deposit or withdraw part of the account, that the bank would be required, even though the bank knew the depositor was alive and still claimed the deposit, to pay the money over to the State.

The defendants and each of them deny that under section ten of the Act the attempt to relieve the person transferring property to the Department of Revenue of liability is not effective or the provision that the Commonwealth shall reimburse the person is of doubtful, if any, value; denies that no provision is made as to how such claim for reimbursement shall be made or to whom it shall be made or by whom it shall be made or how it can be enforced; deny that in addition this section can at any time, at the will of the General [fol. 57] Assembly, be repealed so as to relieve the liability of the Commonwealth of Kentucky; deny that the escheat of 1940 (Kentucky Statutes sections 1605a through 1622-1, both inclusive) is in violation of the national banking laws or any other laws; deny that said Act is unconstitutional and void; deny that said Act violates Article One, Section 10 of the Constitution of the United States, and deny that said Act violates section 19 of the Constitution of Kentucky, or that said Act is a law impairing the obligation of contracts between the bank or banks and their depositors; deny that said Act deprives the bank or its depositors of

their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, or any other provision of the Constitution of the United States, or that same violates Section 14 of the Constitution of Kentucky or sections 2 and 13 of the Constitution of Kentucky; deny that the bank or banks or other person or persons required to make reports and pay over to the State property or indebtedness presumed to have been abandoned, are required to determine at their peril many difficult questions of fact and law as to the application of the law to different classes of persons, such as non-residents and other persons; deny that the banks and other persons required to make such reports are heavily penalized for failure to make such reports correctly; deny that said banks or other persons are required at their own expense to institute litigation, to give bond to secure the State, or otherwise bear the expense of determining doubtful questions or are required to make up complicated reports, audits, etc., of their records without having anything to gain for themselves or without even being permitted to charge the expense of investigation, for auditing or for litigation to the [fol. 58] particular fund in question; deny that the Act is essentially a revenue measure; deny that the primary purpose of said Act is to obtain property and revenue for the State without making a prior compensation therefor and deny that said Act is not uniform upon all taxpayers as required under Section 171 of the Constitution of Kentucky.

The defendants and each of them further deny that the provisions of the Act for repayment to the depositors and other persons whose property is confiscated or for indemnity to the persons required to report and pay over their property to the State, are not sufficient to afford protection to such property owners or to the bank or banks or to other persons required to report and pay over, because the amounts involved as to the particular property owner may be too small to justify making claims, publishing notices and engaging in litigation, or for any other reason.

The defendants and each of them further deny that if the Act is invalid, the rights to indemnity or to a return of the property are likewise invalid; deny that the State may in the future fail to make an appropriation for the return of such property or to provide indemnity; deny that the State may at any time repeal so much of the Act as gives

the right to sue the State for any property turned over prior to such appeal; deny that the State of Kentucky is already indebted to the extent of the limit of indebtedness authorized by the Constitution of Kentucky, Section 49, to-wit, the sum of \$500,000, or any other sum, and deny that any additional indebtedness incurred by the State will violate such Constitutional provision; deny that the Act is an attempt by the State of Kentucky to take the property of plaintiff, or any of the plaintiffs, or all others for whom it is suing, for public use without due process of law or without just or any compensation; deny that the said Act [fol. 59] is in any way in violation of the rights accruing to plaintiff, or any of those sued for by him, by virtue of the Constitution of the State of Kentucky or by virtue of the Constitution of the United States; deny that said Act is an attempt by the State of Kentucky to deny to plaintiff, and all those for whom plaintiff sues, the equal protection of the law in violation of rights accruing to plaintiff, or those for whom plaintiff sues, under the Constitution of the State of Kentucky or under the Constitution of the United States of America; denies that said Act is an attempt by the State of Kentucky to impair the obligation of contracts of plaintiff, and those for whom plaintiff sues, in violation of the rights accruing to plaintiff or plaintiffs under the Constitution of the United States.

Wherefore, having fully answered, defendants and each of them pray that plaintiff's petition herein be dismissed, for its costs herein expended and for all proper and equitable relief to which defendants may appear entitled.

Hubert Meredith, Attorney General, A. E. Funk,
Ass't Attorney General, Earl S. Wilson, Ass't At-
torney General.

[fol. 60]

IN FRANKLIN CIRCUIT COURT

[Title omitted]

ORDER STRIKING PARTS OF PETITION—January 30, 1942

The defendants and each of them having moved the Court to strike certain parts of Plaintiff's petition; and the Court being advised, it is hereby ordered that said motion be sustained and that all of the paragraphs, sentences and lan-

guage of said petition objected to in said motion be stricken from the petition.

W. B. Ardery, Judge.

[fol. 61] IN FRANKLIN CIRCUIT COURT

[Title omitted]

DEMURRER TO ANSWER—Filed January 30, 1942

Plaintiff Anderson National Bank, suing on behalf of itself and all others similarly situated, demurs generally to the answer of the defendants herein because the same does not state a defense to plaintiff's cause of action herein.

Charles W. Milner, Leo T. Wolford, Attorneys for Plaintiff.

[fol. 62] IN FRANKLIN CIRCUIT COURT

[Title omitted]

ORDER SUSTAINING DEMURRER TO ANSWER AND GRANTING PERPETUAL INJUNCTION—January 30, 1942

This cause coming on to be heard on the Demurrer of Plaintiff and those for whom it sues, to the answer of the defendants herein and the Court being advised,

It Is Considered, Ordered and Adjudged that the Demurrer to said answer be, and the same is hereby sustained.

The plaintiff declining to plead further

It Is Further Considered, Ordered and Adjudged:

1. That the defendants, H. Clyde Reeves, individually and as Commissioner of Revenue of the State of Kentucky and a Member of the Kentucky Tax Commission, C. M. C. Porter and R. L. McFarland, individually and as Associate Commissioners of the State of Kentucky and as Members of the Kentucky Tax Commission, and Hubert [fol. 63] Meredith, individually and as Attorney General of the State of Kentucky and each of them, their successors in office and all other persons acting by, through or under them, be and they are severally perpetually enjoined:

a. from requiring plaintiff and any of those for whom it sues to file with the Department of Revenue or the

Commissioner of Revenue or any other department or person on or before September 1, 1940 or on or before any other time the report provided for in section 8 of the Kentucky Escheat Act of 1940 (Ky. St. 1611);

b. from requiring plaintiff or any of those for whom it sues to turn over or pay to the Department of Revenue or any other department or person all or any of the property referred to in Sections 7, 8 and 9 of the Kentucky Escheat Act of 1940, being Ky. St. 1610, 1611 and 1612;

c. from instituting any action, civil or criminal against the plaintiff or any of those for whom it sues to require them to make said report or turn over the property called for in Sections 7, 8 and 9 of the Kentucky Escheat Act of 1940, being Ky. St. 1610, 1611, and 1612.

2. That Sections 7, 8 and 9 of the Kentucky Escheat Act of 1940, being Sections 1610, 1611 and 1612 of Carroll's Kentucky Statutes, 1940 Supplement, and each of them are unconstitutional. And Sections 16 and 20 of said Act (Ky. St. 1619 and 1622-1) and each of them are unconstitutional [fol. 64] in so far as they relate the enforcement or administration of Sections 7, 8 or 9 (Ky. St. 1610, 1611 and 1612) are unconstitutional.

3. That plaintiff and those for whom it sues are entitled to recover its costs herein.

To all of which the defendants and each of them object and except and pray an appeal to the Court of Appeals, which is granted.

W. B. Ardery, Judge.

Have seen: Charles W. Milner, Leo T. Wolford, Attorneys for Plaintiff. Earl S. Wilson, Attorneys for Defendants.

[fol. 65] IN FRANKLIN CIRCUIT COURT

[Title omitted]

MINUTE ENTRY OF MOTION TO SET ASIDE ORDER OF JANUARY
30, 1942—April 13, 1942

Came defendants and filed written motion and moved the Court to set aside the order entered herein on January

30, 1942 enjoining it from enforcing the provisions of Sections 7, 8 and 9 of Chapter 89 Acts of 1940 also filed motion and moved the Court for leave to file an amended answer herein, upon which motion and each of them the Court takes time.

W. B. Ardery, Judge.

[fol. 65a] IN FRANKLIN CIRCUIT COURT

[Title omitted]

MOTION TO SET ASIDE ORDER OF JANUARY 30, 1942—Filed
April 13, 1942

Come the defendants and move the Court to set aside its order entered in this action January 30, 1942, perpetually enjoining the defendants from enforcing the provisions of Sections 7, 8 and 9 of Chapter 89, Acts of 1940, and so much of Sections 16 and 20 of said Act as relate to the enforcement and administration of said Sections 7, 8 and 9, and as ground therefor state that Chapter 79 of the Acts of 1940 was amended by House Bill 331 enacted by the 1942 General Assembly, which was approved and signed by the Governor March 11, 1942, and that said amended Chapter is constitutional.

Earl S. Wilson, R. Vincent Goodlett, Counsel for
Defendants.

[fol. 66] IN FRANKLIN CIRCUIT COURT

[Title omitted]

MOTION FOR LEAVE TO FILE AMENDED ANSWER—Filed April
13, 1942

Come the defendants, and move the Court for leave to file their amended answer.

R. Vincent Goodlett, Earl S. Wilson, Counsel for
Defendants.

[fol. 67] IN FRANKLIN CIRCUIT COURT

[Title omitted]

ORDER GRANTING LEAVE TO FILE AMENDED ANSWER—April
16, 1942

Come the defendants this day and tender and offer to file their amended-answer; and the Court being advised, orders that same be filed and made a part of the record.

This 16th day of April, 1942.

W. B. Ardery, Judge Franklin Circuit Court.

By agreement of parties this cause is set for hearing on Thursday, April 23, 1942.

[fol. 68] IN FRANKLIN CIRCUIT COURT

[Title omitted]

AMENDED ANSWER—Filed April 16, 1942

Come the defendants, by leave of court, and file this their amended answer and adopt and incorporate herein all the allegations of their answer and further allege; that the General Assembly of the Regular Session of 1942 enacted House Bill 331 which was signed and approved by the Governor on March 11, 1942; that said bill amended section 8, Chapter 79, Acts 1940; that said Act is in words and figures as follows:

“An Act to amend Section 8, Chapter 79, Acts 1940.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Sec. 1. That section 8, Chapter 79, Acts 1940 is amended to read as follows:

[fol. 69] “It shall be the duty of all state and national banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of section 7 of this Act, to report annually to the Department as of

July 1, all property held by them declared by this Act to be presumed abandoned. The report shall be filed in the offices of the Department on or before September 1, of each year for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the Department may require for the administration of this Act. The report shall be made in duplicate; the original shall be retained by the Department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post said copy on the court house door or the court house bulletin board. The sheriff shall immediately certify in writing to the Department the date when said copy was posted. Said copy must be posted on or before October 1 of the year when it is made, and shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law. Any person who has made a report of any estate or property presumed abandoned, as required by this Act, shall, between November 1 and November 15 of each year, turn over to the Department all property so reported; but if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exists or never did exist, or [fol. 70] shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the Department except on order of court. No person shall be required to surrender any property on a presumption of abandonment to the Department if the period of time provided by any statute of limitation applicable to the owner's rights as against the holder has expired unless the court orders him to do so. If a person files an action in court claiming any property which has been reported under the provisions of this Act, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the Department, but shall have the duty of notifying the Department of the pendency of such action.

"The person reporting or holding the property or any claimant thereof shall always have the right to a judicial

determination of his rights under this Act and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one petition all such property within the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs.

“Sec. 2. If the Kentucky Revised Statutes are enacted at the present session of the General Assembly, section one of this Act shall, upon the taking effect of the Kentucky Revised Statutes, be substituted in place of KRS 393.110, and shall thereafter be treated as an amendment of KRS 393.110, rather than an amendment to section 8 of Chapter [fol. 71] 79 of the Acts of 1940.”

That on January 30, 1942 this court entered an order sustaining plaintiff's demurrer to defendants' answer on the ground that sections 7, 8, and 9 of Chapter 79, Acts 1940 were unconstitutional and that so much of sections 16 and 20 of said Act as relate to the enforcement and administration of said sections 7, 8 and 9 were also unconstitutional; and that the court perpetually enjoined the defendants from enforcing said sections;

That the ground on which the sections of the 1940 Act were held unconstitutional was that the Act did not provide due process of law in that insufficient notice was given to those affected by said sections;

That the 1940 Act as amended by the 1942 General Assembly unquestionably provides sufficient notice to meet all constitutional requirements.

Wherefore defendants, having answered, pray that Chapter 79, Acts 1940 as amended be held constitutional and that the plaintiff's petition be dismissed, and for their costs herein expended and for all proper legal and equitable relief to which defendants may appear entitled.

[fol. 72]

IN FRANKLIN CIRCUIT COURT

[Title omitted]

DEMURRER TO AMENDED ANSWER—Filed April, 23, 1942

Plaintiff, Anderson National Bank, suing on behalf of itself and all others similarly situated, demurs generally to

the amended-answer of the defendants herein and to the answer of the defendants herein because the same do not state a defense to plaintiff's cause of action herein.

Charles W. Milner, Leo T. Wolford, Attorneys for Plaintiff.

[fol. 73] IN FRANKLIN CIRCUIT COURT

[Title omitted]

MINUTE ENTRY OF HEARING ON DEMURRER—April 23, 1942

Plaintiff filed herein a general demurrer to defendants amended-answer and said demurrer being heard by the Court and the parties directed to file briefs thereon within the next ten days if they so desired.

[fol. 74] IN FRANKLIN CIRCUIT COURT

[Title omitted]

ORDER OVERRULING DEMURRER TO AMENDED ANSWER AND GRANTING PERPETUAL INJUNCTION—May 8, 1942

This cause coming on to be heard on the Demurrer of plaintiff and those for whom it sues, to the Amended answer of the Defendants herein and to the Answer of the defendants herein as amended and the Court being advised,

It Is Considered, Ordered And Adjudged that the Demurrer to said Amended Answer and to said Answer as amended be and the same is hereby overruled.

The plaintiff and the defendants declining to plead further

It Is Further Considered, Ordered And Adjudged:—

1. That the Order heretofore entered on January 30, 1942, be and the same is hereby set aside.

[fol. 75] 2. That the defendants, H. Clyde Reeves, individually and as Commissioner of Revenue of the State of Kentucky and a Member of the Kentucky Tax Commission, C. M. C. Porter and R. L. McFarland, individually and as Associate Commissioners of the State of Kentucky and as Members of the Kentucky Tax Commission, and Hubert

Meredith, individually and Attorney General of the State of Kentucky, and each of them, their successors in office and all other persons acting by, through or under them, be and they are severally perpetually enjoined from requiring plaintiff or any of those for whom it sues to turn over or pay to the Department of Revenue or any other Department or person all or any of the property referred to in Secs. 7, 8 and 9 of Ch. 79, Acts 1940, being the Kentucky Escheat Act of 1940, (Ky. St. 1610, 1611, and 1612) and/or the property referred to in House Bill 331, Regular Session 1942, which amends Sec. 8, Ch. 79, Acts 1940, without first obtaining an order or judgment of a court of competent jurisdiction requiring the delivery of such property.

3. This injunction is granted for the reason that the following parts of Sec. 8, Ch. 79, Acts of 1940, as amended by House Bill 331, Regular Session 1942, are unconstitutional:

(a) that part which requires a turning over of property to the Department of Revenue without an order or judgment of a court of competent jurisdiction;

(b) that part of said section which provides that the copy of the report required to be posted on the Court House door or bulletin board "shall be constructive notice to all interested parties;"

(c) other provisions of Ch. 79, Acts of 1940, as amended by House Bill 331, Regular Session 1942, in so far as they relate to the enforcement of the unconstitutional [fol. 76] part of House Bill 331 set out in Subsection

(a) above.

4. The temporary injunction entered in this cause of action on the 27th day of August, 1940, is hereby dissolved and this cause is dismissed from the docket.

5. Plaintiff and those for whom it sues object and except to so much of the above order as holds

a. That deposits made prior to the effective date of Ch. 79, Acts of 1940, as amended by House Bill 331, Regular Session 1942, are subject to Ch. 79, of the Acts of 1940 or House Bill 331, Regular Session 1942.

b. That deposits in a national bank can be presumed abandoned or can be taken over by the State of Kentucky by court order or otherwise because the owner or

owners of said deposit have not for any length of time (1) negotiated in writing with the bank in respect thereto, or (2) been credited with interest on the pass book or certificate of deposit on his or their request, or (3) had a transfer, disposition of interest or other transaction noted of record in the books or records of such bank, or (4) increased or decreased the amount of such deposit during said period.

c. That plaintiff and those for whom it sues are required to file the report provided for in Sec. 8 of Ch. 79, Acts of 1940, and/or the report provided for in the House Bill 331, Regular Session 1942, and pray an appeal to the Court of Appeals, which is granted.

6. Defendants object and except to so much of this judgment as holds any part of Ch. 79, Acts of 1940, as amended [fol. 77] by House Bill 331, Regular Session 1942, unconstitutional and enjoins defendants from enforcing same. Defendants pray an appeal to the Court of Appeals, which is hereby granted.

W. B. Ardery, Judge.

R. Vincent Goodlett, Earl S. Wilson, Attorneys for Defendant. _____, _____, Attorneys for Plaintiff.

[fol. 78]

IN FRANKLIN CIRCUIT COURT

[Title omitted]

MOTION TO EXTEND ORDER OF MAY 8, 1942 AND ORDER OVER-
RULING SAME—Filed July 3, 1942

The plaintiff and all others similarly situated on whose behalf this action is prosecuted, move the Court for an order extending the Order of May 8, 1942, herein and clarifying the same and for the purpose of declaring and adjudging: (a) whether or not deposits in banks made prior to the effective date of Ch. 79, Acts of 1940, as amended by House Bill 331, Regular Session 1942, are subject to Ch. 79 of the Acts of 1940 or House Bill 331; and (b) whether or not deposits in national banks can be presumed abandoned or can be taken over by the State of Kentucky by court order or otherwise because the owner or owners of such deposits have not for any length of time (1) negotiated in writing with the bank in respect thereto or (2) been credited with interest on the passbook or certificate of deposit at his or

[fol. 79] their request, or (3) had a transfer, disposition of interest or other transaction noted of record on the books or records of such bank, or (4) increased or decreased the amount of such deposit during the said or any period; (c) whether or not plaintiff and others for whom it sues are required to file the report provided by section 8 of Ch. 79, Acts of 1940 and/or the report provided for in such House Bill 331, Regular Session 1942.

Charles W. Milner, Leo T. Wolford, Counsel for the Plaintiff.

This motion is now overruled, to which the plaintiff excepts July 3, 1942.

W. B. Ardery, Judge.

[fol. 80]

IN FRANKLIN CIRCUIT COURT

[Title omitted]

ORDER EXTENDING AND CLARIFYING ORDER OF MAY 8, 1942

This day came the plaintiff, Anderson National Bank, on behalf of itself and all others similarly situated, and filed its motion herein to extend the Order of May 8, 1942 for the purpose of clarifying the same; and the Court being advised

It Is Considered, Ordered and Adjudged

That such motion be, and it is hereby sustained; and the Court hereby extends such May 8, 1942 Order in order to clarify the same and hereby adjudges and declares:

(a) That deposits made prior to the effective date of Ch. 79, Acts of 1940, as amended by House Bill 331, Regular Session 1942, are subject to Ch. 79 of the Acts of 1940 or House Bill 331, Regular Session 1942.

(b) That national banks as well as state banks are subject to the provisions of sections 7, 8 and 9 of Ch. 79, Acts [fol. 81] 1940 as amended, and deposits in national banks can be presumed abandoned and can be taken over by the State of Kentucky by court order at the times and under the conditions outlined in section 7 of such Act.

(c) That the plaintiff and all others similarly situated for whose benefit this suit is brought, are required to file the reports provided for in section 8 of Ch. 79, Acts of 1940

and/or the report provided for in House Bill 331, Regular Session 1942 of the Kentucky Legislature.

The plaintiff on behalf of itself and all others similarly situated for whose benefit it sues herein, object and except to the Court's declaration and judgment set out in the foregoing paragraphs (a), (b) and (c), and each of them; and prays an appeal to the Court of Appeals, which is hereby granted; and it appearing to the Court that the ends of justice so require

It Is Further Ordered That the May 8, 1942 Order is modified in respect of the paragraph setting aside the temporary injunction entered hereon on August 27, 1940, and such temporary injunction, insofar as it enjoins the defendants from requiring any reports to be filed under the statutes above referred to, by the plaintiff, or by any of the persons similarly situated on whose behalf it sues herein, is hereby continued during the pendency of the appeal, and the defendants, and each of them, are enjoined during such time from requiring any of such reports to be filed.

[fols. 82-83] Supersedeas bond on appeal omitted in printing.

[fol. 84] IN FRANKLIN CIRCUIT COURT

[Title omitted]

SUPERSEDEAS—July 3, 1943

I do certify that an appeal has been granted by the Franklin Circuit Court from a judgment rendered at its April Term, 1942 in favor of H. Clyde Reeves, Com. et al., Appellees against Anderson National Bank, et al., Appellants for filing of reports pursuant to Sec. 8 Ch. 79 Acts 1940, &c., and that a supersedeas bond has been executed. Therefore, the appellee and all others are commanded to stay proceedings on the judgment above recited.

Witness my hand as Clerk of said Court, this 3rd day of July, 1942.

Kelly C. Smither, C. F. C. C., by — —, D. C.

In House

Regular Session, 1942

House Bill No. 331

Tuesday, February 17, 1942

Mr. J. Lee Moore introduced the following bill, which was ordered to be printed and referred to the committee on

AN ACT to amend section 8, Chapter 79, Acts 1940.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Sec. 1. That section 8, Chapter 79, Acts 1940 is amended to read as

follows:

It shall be the duty of all state and national banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of section 7 of this Act, to report annually to the Department as of July 1, all property held by them declared by this Act to be presumed abandoned. The report shall be filed in the offices of the Department on or before September 1 of each year for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the Department may require for the administration of this Act. The report shall be made

15 in duplicate; the original shall be retained by the De-
partment, and the

[fol. 86]

16 copy shall be mailed to the sheriff of the county where
the property is

17 located or held. It shall be the duty of the sheriff to
post said copy on

18 the court house door or the court house bulletin board.
The sheriff

19 shall immediately certify in writing to the Department
the date when

20 said copy was posted. Said copy must be posted on or
before October 1

21 of the year when it is made, and shall be constructive
notice to all in-

22 terested parties and shall be in addition to any other
notice provided by

23 statute or existing as a matter of law. Any person who
has made a

24 report of any estate or property presumed abandoned,
as required by

25 this Act, shall, between November 1 and November 15
of each year, turn

26 over to the Department all property so reported; but
if the person

27 making the report or the owner of the property shall
certify to the

28 Department by sworn statement that any or all of the
statutory condi-

29 tions necessary to create a presumption of abandon-
ment no longer exist

30 or never did exist, or shall certify the existence of any
fact or circum-

31 stance which has a substantial tendency to rebut such
presumption,

32 then, the person reporting or holding the property shall
not be required

33 to turn the property over to the Department except on
order of court.

34 No person shall be required to surrender any property
on a presump-

35 tion of abandonment to the Department if the period of
time provided

36 by any statute of limitation applicable to the owner's
37 rights as against
38 the holder has expired unless the court orders him to
39 do so. If a per-
40 son files an action in court claiming any property which
41 has been re-
42 ported under the provisions of this Act, the person re-
43 porting or holding
44 such property shall be under no duty while any such
45 action is pending
46 to turn the property over to the Department, but shall
47 have the duty of
48 notifying the Department of the pendency of such
49 action.
50 The person reporting or holding the property or any
claimant
thereof shall always have the right to a judicial deter-
mination of his
rights under this Act and nothing therein shall be con-
strued otherwise;

[fol. 87]

46 and the Commonwealth may institute an action to re-
47 cover such prop-
48 erty as is presumed abandoned whether it has been re-
49 ported or not
50 and may include in one petition all such property within
the jurisdic-
tion of the court in which the action is brought pro-
vided the property
of different persons is set out in separate paragraphs.

§ 2 If the Kentucky Revised Statutes are enacted at
the present
2 session of the General Assembly, section one of this Act
3 shall, upon
4 the taking effect of the Kentucky Revised Statutes, be
5 substituted in
6 place of KRS 393.110, and shall thereafter be treated
as an amend-
ment to KRS 393.110 rather than an amendment to sec-
tion 8 of Chap-
ter 79 of the Acts of 1940.

[fol. 88] IN COURT OF APPEALS OF KENTUCKY

ANDERSON NATIONAL BANK, et al., Appellants

vs.

H. CLYDE REEVES, ETC., et al., Appellees

Appeal from a Judgment of the Franklin Circuit Court

JUDGMENT—December 18, 1942

The Court being sufficiently advised, it seems to them the judgment herein is erroneous in part.

It is therefore considered that the judgment be affirmed on the original appeal and reversed on the cross appeal with directions to enter a judgment in conformity with this opinion. An order having been entered in this Court suspending the operation of the Act during the pendency of the appeal, the Circuit Court will on return of the case to that Court, fix a date for compliance with the Act giving a reasonable time for that purpose; which is ordered to be certified to said court. Whole Court sitting except Judge Rees.

It is further considered that the appellees recover of the appellants, their costs herein expended.

[fol. 89] IN COURT OF APPEALS OF KENTUCKY

ANDERSON NATIONAL BANK, et al., Appellants,

vs.

H. CLYDE REEVES, Individually and as Commissioner of Revenue, Appellee

Appeal from Franklin Circuit Court, Hon. Wm. B. Ardery,
Judge

OPINION—December 18, 1942

Opinion by Judge Fulton

Affirming on the Original Appeal and Reversing on the
Cross Appeal

This appeal brings in question the correctness of a judgment holding valid certain parts of Chap. 79 of the Acts of

1940 (K. R. S. 393.010 et seq.) as amended by Chap. 156 of the Acts of 1942, dealing with escheats and with the disposition of certain classes of property declared to be presumed abandoned. By the cross appeal it is sought to reverse the judgment in so far as it adjudged certain portions of the same Acts invalid.

[fol. 90] By sections 3 to 6 of the Act inclusive (K. R. S. sections 393.020, 393.030, 393.040 and 393.050) certain classes of property are made subject to escheat and it is made the duty of the Commissioner of Revenue to institute proceedings to vest title to such property in the Commonwealth, the procedure to be in accordance with the Civil Code. Where title to such property is vested in the Commonwealth pursuant to such proceedings, any person claiming an interest therein, and who was not actually served with notice and did not appear in the proceedings, may within five years after the judgment file his claim with the Department of Revenue. Appropriate procedure is provided for the prosecution of such claims and right of appeal is given to the Franklin Circuit Court and to this court. These portions of the Act are not in controversy although it is suggested by appellants that the entire Act should be declared invalid. They are mentioned, however, for the purpose of giving a general idea as to the scope of the Act.

So far as material to this controversy section 7 of the Act (K. R. S. 393.060 and 393.070) provides in substance:

(1) That where the owner of bank deposits payable on demand has not for ten successive years next preceding the date for making reports as required by the Act (a) negotiated in writing with the bank or trust company concerning it, or (b) been credited with interest on the pass book or certificate of deposit on his request, or (c) had a transfer, distribution of interest, or other transaction noted of record in the books or records of the bank or trust company, or (d) increased or decreased the amount of deposit, such deposits shall be presumed abandoned.

(2) The same presumption of abandonment arises with respect to deposits not payable on demand except that the period of time is twenty five years instead of ten.

Section 8 (K. R. S. 393.110) provides in substance that all persons holding property declared to be presumed

abandoned must report same to the Department of Revenue annually as of July 1, the report being due on or before September 1 of each year. A copy of the report is required to be posted on the courthouse door or bulletin board on or before October 1 and it is provided that such publication "shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law". The person reporting the property is required to turn it over to the Department of Revenue between November 1 and November 15 except that "if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exists or never did exist or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then the person reporting or holding the property [fol. 92] shall not be required to turn the property over to the Department except on order of court * * *. The person reporting or holding the property or any claimant thereof shall always have the right to judicial determination of his rights under this Act and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not * * *".

Section 17 (K. R. S. 393.250) provides that all monies received by the Department of Revenue under the provisions of the Act must be deposited with the State Treasurer and credited to the account of the General Expenditure Fund.

Section 11 (K. R. S. 393.140) provides that any person claiming an interest in any property turned over to the state on the ground that it was presumed abandoned (provided it was not subsequently adjudged to have been actually abandoned) may claim it "at any time after same was paid to this Commonwealth"; and, even where actual abandonment was adjudged subsequent to payment to the state, any person claiming an interest, who was not actually served with notice and who did not appear, and whose claim was not considered during the proceedings, may within five years after the judgment file his claim with the Department.

Section 12 (K. R. S. 393.140) provides that if a claimant establishes his right to property presumed abandoned the Commissioner of Revenue must authorize payment to him

[fol. 93] of a sum "equal to the same amount which was paid in to the State Treasury in compliance with this Act".

The claimant is required to publish notice of his claim, within fifteen days after filing it, in a newspaper in the county in which the property was held before being transferred to the Commonwealth.

Section 10 (K. R. S. 393.130) provides: "Any person who transfers to the department property to which the state is entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter."

Section 16 (K. R. S. 393.230) provides that if any one refuses to pay or surrender property presumed abandoned to the Department as required by the Act, an equitable proceeding may be brought on relation of the Commissioner to force payment or surrender. It is further provided that if property is turned over to the Department on presumption of abandonment the Commissioner may at any subsequent time institute proceedings to establish conclusively that it was *actually* abandoned, or that the owner has died and there is no person entitled to it. It is also provided in this section that all actions mentioned under the Act shall be filed as equity actions and follow the procedure provided by the Civil Code of Practice, unless otherwise provided.

[fol. 94] This action was filed under the Declaratory Judgment Act by the Anderson National Bank, suing on behalf of itself and all others similarly situated and on behalf of depositors in banks, to test the validity of the Act and an injunction was sought to prevent the appellees from enforcing it—the appellees do not question the right of appellants to challenge the validity of the Act in the representative status assumed.

The trial court adjudged that the part of the Act requiring a voluntary delivery of the property to the state was unconstitutional because of the absence of provision for adequate notice to the owners of the property. Accordingly, the appellees were enjoined from insisting on or accepting a delivery of property presumed abandoned without first filing a suit and procuring a judgment for delivery thereof. It was adjudged that the Act was valid in so far as it required reports of property presumed abandoned and

in so far as it authorized the filing of actions to compel the surrender of property declared to be presumed abandoned. Accordingly, the trial court declined to enjoin appellees from requiring reports of property presumed abandoned and also declined to enjoin appellees from filing suits to recover property presumed abandoned, whether reported or not.

Appellants question the correctness of the judgment in holding the indicated portions of the Act valid and the appellees, by cross appeal, seek a reversal of the judgment [fol. 95] in so far as it holds any part of the Act unconstitutional or enjoins enforcement thereof.

Appellants advance the propositions 1) that the provisions of the Act requiring delivery to the State of deposits declared to be presumed abandoned constitute, in effect, an attempted escheat of such deposits, which is invalid because of the absence of notice and judicial determination, 2) that even if valid as to deposits made subsequent to the Act such provisions are ineffective as to prior deposits because, when so applied, such provisions impair the obligation of the contract of deposit, and 3) that in any event such provisions, even though valid as to state banks, are invalid as to national banks. These propositions will be considered in the order named.

Appellants' brief contains an elaborate and scholarly treatise on the origin, history and purposes of prior escheat laws of this state as a basis for their argument that the Act is unconstitutional in so far as it requires a delivery to the state of deposits declared to be presumed abandoned without a judicial determination to that effect made after adequate notice. And, were we dealing with an out and out escheat act, their argument would be most persuasive—we would unhesitatingly say that there can be no escheat except pursuant to judicial determination made after legal notice.

But such is not the case, notwithstanding appellants' vehement insistence to the contrary and notwithstanding the fact that the title of the Act recites that it [fol. 96] relates to property actually or presumptively subject to escheat. Certain parts of the Act, as indicated above, do relate to out and out escheat but before title can become vested in the state judicial determination is necessary and such determination must be made after adequate

notice since the proceedings are required to be according to the Civil Code.

But the portions of the Act dealing with dormant bank deposits do not provide for a seizure of the deposits and vesting of title or ownership in the state but merely for a transfer of property which may later be adjudged to be subject to escheat, and these provisions are for the benefit and protection of both the depositors and the state. As said by the Supreme Court in *Provident Institution for Savings v. Malone*, 221 U. S. 660, 31 S. Ct. 661, 55 L. Ed. 899, 31 L. R. M. (N. S.) 1129, in discussing a somewhat similar statute, "the statute proceeds on the general principle that corporations may become involved, or may be dissolved; or that, after long lapses of time, changes may occur which would require someone to look after the rights of the depositor. The statute deals with accounts of an absent owner, who has so long failed to exercise any act or ownership as to raise the presumption that he has abandoned his property. And if abandoned, it should be preserved until he or his representative appear to claim it; or, failing that, until it should be escheated to the state. The right and power so to legislate is undoubted."

[fol. 97] The good faith of the Legislature cannot be questioned and it is to be assumed that the Act was for the protection of the depositors as well as for the benefit of the state. That this is a justifiable assumption is clearly revealed in the provision giving the depositor (and this, of course, includes his legal representatives) the right, without limit of time, to make a claim and receive a return of the deposit provided there has not been a judicial determination of actual abandonment—and even after such judicial determination five years is given for the same purpose to any person who was not actually served with notice and did not appear in the proceedings.

In this respect both the rights of the depositor and the bank are fully protected by giving to the depositor a right of action against the state, which is conclusively presumed always to be able to pay, and by the provision relieving the bank of liability to the depositor upon compliance with the Act, fortified by the further provision for reimbursement to the bank by the state for any liability incurred by reason of compliance with the Act. The mere taking away of the depositor's right of action against the bank constitutes no substantial deprivation of property when, in lieu

thereof, he is afforded an action against the Commonwealth, the most perfect of all protection.

Nor does the requirement that the owner making claim must publish notice of his claim in a newspaper within fifteen days after filing it impose such a burden as to constitute a substantial deprivation. This is a reasonable requirement [fol. 98] and is for the benefit of depositors whose deposits have been turned over to the state. Publicity is thus given to such claims in order that the true owners may be put on notice if a false claim is made.

It is our conclusion that the controversial portions of the Act are reasonable (as to the time provided as well as to the procedure) and that they would not constitute a deprivation of property without due process of law in violation of the Constitution of the United States even in the absence of the provision requiring notice to be posted at the courthouse door. Accordingly, it becomes unnecessary to discuss the sufficiency of such notice.

The conclusion we have reached is fully supported by *Comth. of Pennsylvania v. Dollar Savings Bank*, 259 Pa. 138, 102 Atl. 559, 1 A. L. R. 1048; *State v. Security Sav. Bank*,—Calif. App.—, 154 Pa. 1070; *Provident Institution for Savings v. Malone*, supra, and *Brookline Borough Gas Co., v. Bennett*, 227 N. Y. S. 203. The latter case upheld a similar act dealing with consumer deposits with utility companies (a class of property within the purview of the presumptive abandonment provision of the act in question), but the legal questions involved were identical with ones confronting us here.

It is the contention of appellants that even though the Act be held valid it can apply only to deposits made after its effective date since its application to deposits made [fol. 99] prior thereto would result in impairment of the contract between the depositor and the bank in violation of section 19 of the Constitution of Kentucky which prohibits the enactment of any law impairing the obligation of contracts. It is not argued that such application of the Act would result in violation of the contract clause of the Federal Constitution since this question was laid to rest by the Supreme Court in *Provident Institution for Savings v. Malone*, supra and *Security Sav. Bank v. Calif.*, 263 U. S. 282, 68 L. Ed. 306, wherein it was held that such statutes are not violative of the contract clause. These decisions are binding on us as to the federal question but not on the ques-

tion of application of the Constitution of this state. *Glenn et al v. Field Packing Co.*, 290 U. S. 177.

In support of their contention appellants rely on *Bank of Louisville v. Board of Trustees of Public Schools*, 83 Ky. 219, 5 S. W. 735 and *Louisville School Board v. Bank of Kentucky*, 86 Ky. 150, 5 S. W. 739. In each of these cases the statutes in question attempted to vest in the school board title to bank deposits of persons who were absent from the state for eight years and who had not exercised any control over the deposits during that time. It was provided that the school board should be liable to the owner of the deposit, if he should later claim it, *but that no such liability should attach to the state*. In each case it was held that the deposit created a contract between the depositor and the bank by which the latter acquired the right to retain, use and control the money until it was returned to [fol. 100] the depositor on his demand and that the statutes were void because they impaired the obligation of the contract from the standpoint of both the bank and the depositor.

A careful analysis of those opinions, reveals, however, that the underlying basis of the court's conclusion was the absence of perfect protection to the depositor and the bank. The opinion in the former case, on which the latter is based, is threaded through with comments on the failure of the statute to give the depositor, in lieu of his right of action against the bank, the substantial remedy of looking to the state for reimbursement and on its failure to give the bank any substantial remedy since it was left with no remedy except that of looking to the school board for reimbursement in the event it was compelled to account for the deposits. It is doubtful, to say the least, that the court would have reached the conclusion it did had the statute afforded to both a depositor and the bank the same perfect protection as that afforded by the Act here involved.

In any event, we think the correct conclusion was reached by the Supreme Court in the two cases referred to. It seems so clear as to require little discussion that there is no substantial impairment of the contract from the depositor's standpoint since his deposit is returnable to him by the state at any time he files a claim therefor. The argument as to impairment of the contract from the bank's standpoint was effectively answered by the Supreme Court [fol. 101] in *Security Saving Bank v. Calif.*, *supra*, in these

words: "The contract of deposit does not give the banks a tontine right to retain the money in the event that it is not called for by the depositor. It gives the bank merely the right to use the depositor's money until called for by him or some other person duly authorized. If the deposit is turned over to the state, in obedience to a valid law, the obligation of the bank to the depositor is discharged."

It is our conclusion that the parts of the Act requiring a delivery of deposits declared to be presumed abandoned to the Department of Revenue are valid in their application to deposits made both prior and subsequent to the effective date of the Act.

There is little appeal in the insistence of appellants that if the strict letter of the decisions in *Bank of Louisville v. Board of Trustees of Public Schools* and *Louisville School Board v. Bank of Kentucky*, *supra*, is not followed our decision should be made prospective in accord with the policy adopted in *Payne v. City of Covington*, 276 Ky. 380, 123 S. W. (2d) 1045, of affording protection to those who have acted in reliance on opinions of this court and whose rights might be adversely affected by a change of decision, since, as indicated above, no substantial impairment of any right of either depositors or banks is effected by the Act.

[fol. 102] The question of validity of the Act as applied to national banks must be approached in the light of the limitations applicable to state legislation affecting such institutions. National banks are amenable to state laws as are other institutions if such laws do not interfere with their functions in such manner as to conflict with the general objects and purposes of the National Banking Act. *First National Bank of Elizabethtown v. Com.*, 187 Ky. 151, 219 S. W. 175; *McClellan v. Chipman*, 164 U. S. 347, 41 L. Ed. 461; *First National Bank of San Jose v. Calif.*, 262 U. S. 366, 67 L. Ed. 1030. The burden placed on national banks of making the report of such deposits as the Act declares to be presumed abandoned is not an unwarranted interference. *Waite v. Dowley*, 94 U. S. 527, 24 L. Ed. 181. But, as said in *First National Bank of San Jose v. Calif.*, *supra*, "any attempt by a state to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created. *Davis v.*

Elmira Sav. Bank, 161 U. S. 275, 40 L. Ed. 700, 16 Sup. Ct. Rep. 502."

Appellants insist that the case just quoted from is conclusive as to the invalidity of the Act in its application to national banks. In that case was involved the validity of California statutes as so applied. The statutes declared that deposits in bank to the credit of depositors who for more [fol. 103] than twenty years had not made a deposit or withdrawn any part of the deposit and where neither the depositor nor any claimant had filed any notice with the bank showing his present residence, should *escheat* to the state. The court, in commenting on the opinion of the Supreme Court of California affirming a judgment directing the payment of such deposits to the state, pointed out that the California court had declined to express an opinion as to whether the judgment operated as a present escheat of the rights of the depositor or whether the depositor still had the right to prosecute an action to obtain payment of the deposit from the state. Therefore, in discussing the case, the Supreme Court treated the California statutes as statutes of escheat or confiscation and held them void as being a regulation of national banks to such an extent as to tend to frustrate the purposes and objects of national legislation with respect to such banks. This was the reason the California statutes were held to be invalid as to national banks and not, as suggested by appellees, the fact that the statutes impaired the obligation of the contract of deposit. Analysis of the opinion reveals, however, that the only undue interference of the statutes with national banks was embodied in one sentence of the opinion as follows: "The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation." [fol. 104] Thus it seems that the California statutes were held invalid as to national banks because they were deemed by the court to be *escheat* statutes confiscating the deposits solely by reason of *dormancy*. The comment of the court on the failure of the California court to express an opinion on the right of the depositor to secure a return of the deposit is significant. Thus, while this case unquestionably decided that the California statutes were invalid as to national banks and while this decision was reaffirmed as to the particular California statutes in the latter case of *Security Sav. Bank v. California*, *supra*, we do not feel that it is

controlling as to the act in controversy since the Act differs from the California statutes in that no escheat is declared by reason of mere dormancy—the Act is one pursuant to which mere custody, as distinguished from title, is vested in the state by reason of dormancy and is not one of confiscation having the tendency to cause depositors to hesitate to make deposits in national banks. And, since the confiscatory feature, which the Supreme Court had in mind as being the feature of the California statutes which tended to bring about an undue interference with national banks, is absent from the present Act, it does not appear to us that the case is controlling of the question now presented.

It is true that the Supreme Court of Tennessee in *American National Bank of Nashville v. Clarke*, Supt. of Banks, 175 Tenn. 480, 135 S. W. (2d) 935 and the United States Circuit Court of Appeals for the Sixth Circuit in *Star, Atty. Gen. v. O'Connor; Comptroller, et al.*, 118 F. (2d) 548, relying on the authority of the case under discussion, held somewhat similar statutes of Tennessee and Michigan invalid as to national banks but it seems to us that those cases [fol. 105] fail to give full consideration to the fact that the Supreme Court pointed out that the undue interference of the California statutes with national banks was brought about by the confiscatory nature of the statutes in providing out and out escheat by reason of mere dormancy. It is significant, though, that the opinion in the Sixth Circuit case did touch lightly on this aspect of the San Jose Bank case as is revealed by the remark that "the Michigan statutes resemble the California Act in being closer akin to illegitimate laws of forfeiture than to legitimate laws of escheat."

Since the act in controversy does not provide for an escheat of deposits by reason of mere dormancy, as did the California statutes, (title being vested in the state only after judicial determination of *actual* abandonment), and since the depositor may at any time before actual abandonment is adjudged (and five years thereafter if he was not served with actual notice) secure a return of his deposit from the state, it is our opinion that the Act has no tendency to cause depositors to hesitate on account of apprehended fear of confiscation to make deposits in national banks. This being true, there is no unwarranted interference with such banks and no frustration of the purpose of national legis-

lation concerning them such as to render the Act invalid as to them.

The judgment is affirmed on the original appeal and reversed on the cross appeal with directions to enter a judgment in conformity with this opinion. An order having been entered in this court suspending the operation of the Act during the pendency of the appeal, the circuit court will, on return of the case to that court, fix a date for compliance with the Act, giving a reasonable time for that purpose.

Whole court sitting except Judge Rees.

[fols. 106-112] Attorneys for Appellants: Chas. W. Milner, Louisville, Kentucky; Leo T. Wolford, Louisville, Kentucky.

Attorneys for Appellee: Hubert Meredith, Atty. Gen., Frankfort, Kentucky; A. E. Funk, Asst. Atty. Gen., Frankfort, Kentucky; Earl Wilson, Asst. Atty. Gen., Frankfort, Kentucky; Vincent Goodlet, Frankfort, Kentucky.

IM.

[fol. 113] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

APPELLANTS' PETITION FOR REHEARING—Filed February 16, 1943

We know the Court has carefully considered this case. We also know that the Court maintains an open mind and will gladly rectify its own errors if convinced that errors exist.

For ready reference a copy of the Opinion is printed as an Appendix.

National Banks

1. The Opinion states that *First National Bank of San Jose v. California*, 262 U. S. 366, is inapplicable because of the Court's conclusion that there is a material difference between the California and Kentucky statutes. It is re-[fol. 114] spectfully submitted that the Court has made a distinction where there is no difference in fact.

The California statute provided, in substance, that where deposits had been inactive for twenty years the Attorney

(Italics supplied throughout.)

General should file suit against the depositors and the bank; that there should be personal service, if possible, or by publication for four weeks; that the clerk of the court should issue a notice giving the number and style of the suit and directing it to all persons claiming an interest in the deposit; that this notice is also to be published for four weeks; that thereafter there should be a hearing in the court and a judicial decree. Thus the California statute provided that the escheat for abandonment or dormancy should take place at one time and by one court procedure.

The Kentucky statute, on the other hand, accomplishes this same result by dividing the process into two steps. That is, the Kentucky statute first requires all banks, state and national, to voluntarily turn over inactive or dormant accounts to the Department of Revenue. If the bank does not voluntarily surrender the deposit, the Department can require its surrender and the bank is required to pay 10% penalty up to \$500 (K. R. S. 393.290). The Court's conclusion is that there is no escheat of the deposits so turned over to the Department, but merely a transfer of custody. We do not agree with this conclusion for reasons that will be hereafter stated; however, for present purposes we concede the point.

[fol. 115] It is respectfully submitted that the Court's line of reasoning, *i. e.*, the alleged difference between the California and the Kentucky law has overlooked the fact that the Kentucky Act does not end with this so-called "transfer of custody." The Kentucky Act provides (K. R. S. 393.230) that after there has been this so-called "transfer of custody," the State "may at *any subsequent time institute proceedings* to establish conclusively that the property was actually abandoned." Of course, it would be conceded that after such a judgment an actual escheat takes place.

In other words, under the Kentucky Act, there is first what this Court is pleased to call a mere "transfer of custody" of a National bank deposit on account of "presumed abandonment," and fifteen minutes later the State can file suit and have actual abandonment and escheat adjudged.

Therefore, the results accomplished by the California Act and by the Kentucky Act are the same, *i. e.*, the escheat of deposits in a National Bank on account of abandonment.

or inactivity or dormancy of the deposit. In California, the escheat is by one step—suit, notice, hearing and judicial determination. In Kentucky, the same escheat is accomplished by two steps—first, the taking is sugar-coated by calling it a mere “transfer of custody,” and, second, and immediately thereafter by the suit “to establish conclusively that it was actually abandoned.”

It makes no difference to the bank, it makes no difference to the depositors and there is no difference in legal principle [fol. 116] whether the taking is all at one time or strung out into two parts.

Of course the State knew from the case of *First National Bank of San Jose v. California*, 262 U. S. 366, that the Supreme Court held that a deposit in a National bank could not be escheated because of inactivity or dormancy. It may be that the authors of the Act thought that if the escheat was accomplished in two steps they could thereby get deposits from a National bank that they could not get if only the one step was used. In other words, the authors of the Act must have thought that if they could get the National banks out of the way through a so-called “transfer of custody,” the way would then be open to escheat the deposits which by that time were in the hands of the State itself.

In escheating dormant or inactive deposits in a National bank by two steps instead of one, Kentucky is emulating the example made famous by a certain paper hanger in Europe to “take a little at a time.”

2. The Court concludes that because in *First National Bank of San Jose v. California*, 262 U. S. 366, the Supreme Court commented on the fact that the California court had declined to say whether or not the true owner or claimant of the deposit could sue and recover that therefore such owner or claimant could not recover and the Court concludes therefrom that the case was decided solely on the basis that there was confiscation because the owner could not sue to recover.

It is our position on the other hand that the Supreme Court was not interested in whether the depositor could sue and get the deposit back or not. The only thing that [fol. 117] concerned the Supreme Court was the attempt by the State of California to control how long a National bank could keep an inactive or dormant account. It was immaterial to the Supreme Court in its decision whether

the attempted control by the State was exercised by taking the deposit by escheat proceedings or the less harsh sounding phrase of "transfer of custody." This is true for two reasons:

(a) If the fact that the owner of the California deposit could not get it back was the reason for the Supreme Court decision, that Court would certainly have distinctly said so and would not have left the so-called controlling point to the surmise and conjecture that the decision was based on the inability of the depositor to get his money back. The Supreme Court said the following which is concerned only with the *taking* of deposits from a National bank regardless of whether the taking was by escheat or transfer of custody:

"Plainly, no State may prohibit national banks from accepting deposits or directly impair their efficiency in that regard. And we think, under circumstances like those here revealed, a State may not dissolve contracts of deposit even after twenty years and require national banks to pay to it the amounts then due; the settled principles stated above oppose such power.

"Does the statute conflict with the letter or general object and purposes of the legislation by Congress? Obviously, it attempts to qualify in an unusual way agreements between national banks and their customers long understood to arise when the former receive deposits under their plainly granted powers. If Calif. [fol. 118] may thus interfere other States may do likewise; and, instead of twenty years, varying limitations may be prescribed—three years perhaps, or five, or ten, or fifteen. We cannot conclude that Congress intended to permit such results. They seem incompatible with the purpose to establish a system of governmental agencies specifically empowered and expected freely to accept deposits from customers irrespective of domicile with the commonly consequent duties and liabilities. The depositors of a national bank often live in many different States and countries; and certainly it would not be an immaterial thing if the deposits of all were subject to *seizure* by the State where the bank happened to be located."

(b) This Court's Opinion holds the above Supreme Court decision in the California case inapplicable here because of this Court's conclusion that the California statute was a

confiscation statute whereas the Kentucky Statute did not affect confiscation. The Court's differentiation is summed up in the following from the Opinion (Appendix, p. 11):

" * * * Analysis of the opinion reveals, however, that the only undue interference of the statutes with national banks was embodied in one sentence of the opinion as follows: 'The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation.' * * * Thus, while this case unquestionably decided that the California statutes were invalid as to national banks. * * * we do not feel that it is controlling as to the act in controversy since the Act differs from the California statutes in that no escheat is declared by reason of mere dormancy—the Act is one pursuant to which mere custody, as distinguished from title, is [fol. 119] vested in the state by reason of dormancy and is not one of confiscation having the tendency to cause depositors to hesitate to make deposits in national banks. * * *

From the above, the Court seems to be of the opinion that there is no confiscation unless there is a transfer of title. This is incorrect. Confiscation results from a taking of the use of property where there has been no transfer of title or even of possession.

"Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title." *Chicago, R. I. & P. Ry. Co. v. U. S.*, 234 U. S. 80.

In *Securities Savings Bank v. California*, 263 U. S. 282, the Supreme Court held the same California statute valid as to State banks, and, as this Court correctly states in the instant Opinion, expressly reaffirmed the prior decision in the National Bank case (262 U. S. 366) that the California statute could not be applied to National banks.

In the *Securities Savings Bank* case, the Supreme Court clearly stated that it was not in the slightest interested or concerned with whether the depositor could get his money back or not:

p. 290. "In the opinion below it was suggested that the statute may be construed as permitting a depositor,

although named as defendant in the attorney general's suit, to make claim against the State, under § 1272, at any time within five years (or the extended period) after final judgment, if he did not appear in the suit. As no depositor had appeared, the point was not passed [fol. 120] upon; and the state court expressly left open the rights of depositors and their privies in respect to escheat. *State v. Security Savings Bank*, 186 Cal. 419, 431. *We have no occasion to consider them.*"

All Banks

3. The Opinion states (Appendix, p. 1):

"By sections 3 to 6 of the Act inclusive (K. R. S. sections 393.020, 393.030, 393.040 and 393.050) certain classes of property are made subject to escheat and it is made the duty of the Commissioner of Revenue to institute proceedings to vest title to such property in the Commonwealth, the procedure to be in accordance with the Civil Code."

and again (Appendix, p. 6):

"* * * Certain parts of the Act, as indicated above, do relate to out and out escheat but before title can become vested in the state, judicial determination is necessary * * *"

It is respectfully submitted that in the above quotations the Court has misconstrued the sections in question, and has stated what they should rather than what they do contain.

The named sections do not make it the duty of the Commissioner to institute proceedings before the property covered in the respective sections is escheated nor under the Act does title become vested in the State only after a judicial determination.

First, let us say that the word "escheat" appears only once in the Act as originally passed, and that is in Sec. 13 [fol. 121] (Acts, 1940, Ky. St. 1616). It appears only once in K. R. S., and that is in Sec. 393.170. The word appears twice in the title to the Act. We consider these sections referred to in the opinion.

For ready reference K. R. S. 393.020 is as follows:

"Property subject to escheat. If any property having situs in this state has been devised or bequeathed

to any person and is not claimed by that person or by his heirs, distributees or devisees within eight years after the death of the testator, or if the owner of any property having a situs in this state dies without heirs or distributees entitled to it and without disposing of it by will, it shall vest in the state, subject to all legal and equitable demands. Also, any property abandoned by the owner, except a perfect title to a corporeal hereditament, shall vest in the state, subject to all legal and equitable demands. Any property that vests in the state under this section *shall be liquidated*, and the proceeds, less costs, fees and expenses incidental to all legal proceedings of the liquidation *shall be paid* to the department."

Instead of there being any requirement for suit before the vesting of title or any duty of the Commissioner to bring a suit, the provision that: "Any property that vests in the State under this Section shall be liquidated and the proceeds . . . paid to the department," would certainly seem to require a voluntary surrender by whoever was in possession of the property. If the act required a suit before title vested, then who would do the liquidating to pay the proceeds to the department?

[fol. 122] K. R. S. 293.030 is in four sections as follows:

(1). *The personal representatives of a person, any part of whose property is not distributed by will, and who died without heirs or distributees entitled to it shall settle their accounts within one year after qualifying, and pay to the department the proceeds of all personal property, first deducting the proper legal liabilities of the estate.*

(2) *If the whole personal property cannot be settled, and the accounts closed within one year, the settlement as far as practicable, shall then be made and the proceeds paid to the department, and the residue shall be settled and paid as soon thereafter as can be properly done.*

(3) *The personal representative shall take possession of the real property of the decedent not disposed of by his will, and rent it out from year to year until it is otherwise legally disposed of, and pay the net proceeds to the department.*

(4) The personal representative shall also make out and transmit to the department a description of the quantity, quality, and estimated value of the real property and its probably annual profits."

Instead of any requirement of suit by the Commissioner, the above sections *require* the personal representative to turn escheated the property over to the State.

K. R. S. 393.040 is as follows:

"Procedure if legacy or devise is not claimed. If any devisee or legatee, or his heir, devisee or distributee, has failed for eight years to claim his legacy or devise, *the personal representative of the testator, or other person possessing it shall, after deducting the legal liabilities thereon, pay and deliver it, and the net profits from it to the department.*"

[fol. 123] There is nothing in the above requiring suit, but on the other hand, it is made the duty of the personal representative to voluntarily surrender it to the department.

K. R. S. 393.050 is as follows:

"Presumption of death after seven years; disposition of property. When a person owning any property having a situs in this state is not known to be living for seven successive years, and neither he nor his heirs, devisees or distributees can be located or proved to have been living for seven successive years, he shall be presumed to have died without heirs, devisees or distributees, and his property *shall be liquidated* and the proceeds, less costs incident to the liquidation and any legal proceedings, and the liabilities which have been properly claimed and approved against it, *shall be paid to the department.*"

Again there is no requirement for the suit—^{whoever} is in possession is required to liquidate the property and to pay it to the department.

In fact, under the Act, if a personal representative fails to comply with K. R. S. 393.030 and 393.040 copied above, and fails to voluntarily turn over property to the State, such personal representative is liable for a 10% penalty up to \$500, unless he pays for a bond *and in good faith contests the applicability of the statute.*

K. R. S. 393.290 provides as follows:

“393.290. Civil action to enforce production of reports, surrender of property. (1) The department may require the production of reports, or the *surrender of property* as provided in this chapter by civil action, including an action in the nature of a bill of discovery, [fol. 124] in which case the defendant shall pay a penalty equal to ten percent of all amounts that he is ultimately required to surrender. This penalty shall not exceed five hundred dollars.

“(2) Any person who in good faith contests the applicability of this chapter to him may be relieved of the threat of any penalty by posting a compliance bond in an amount and of surety sufficient to the court.”

So that, instead of any requirement in the statute for a suit and judgment before title vests in the State as to admittedly escheated property, we find a 10% penalty imposed on personal representatives and others who do not voluntarily turn such property over to the State.

In the Opinion it is stated (Appendix, p. 5):

“ * * * And, were we dealing with an out and out escheat act, their argument would be most persuasive—we would unhesitatingly say that there can be no escheat except pursuant to judicial determination made after legal notice.”

Without doubt, K. R. S. 293.030 and 293.040 copied above, require personal representatives voluntarily and without “judicial determination made after legal notice” to turn over to the Department of Revenue property that is admittedly escheated. We think the same thing is true of whoever has possession of the property referred to in K. R. S. 393.020 and 393.050, although it is not spelled out as plainly as in the first-named sections.

It was for this and other reasons that we suggested to the Court in our original brief that it would do a favor to hold the entire Act void.

[fol. 125] 4. We respectfully ask the Court to clear up a point that was referred to in our original brief, but not commented on in the Opinion. The Opinion states:

“The person reporting the property is required to turn it over to the Department of Revenue between

November 1 and November 15 except that "if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exists or never did exist or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then the person reporting or holding the property shall not be required to turn the property over to the Department *except on order of court*"

Under the above quoted part of the law, if a dormant deposit has been reported to the Department, and thereafter the owner shows up, can the bank pay the depositor his money, or must the bank hold the money pending "*except on order of court.*"

5. We do not know what effect, if any, it would have on the Court's opinion, but feel an obligation to call the following to the Court's attention. That is, in the Opinion it is stated (Appendix, p. 3):

"Section 17 (K. R. S. 393.250) provides that all monies received by the Department of Revenue under the provisions of the Act must be deposited with the State Treasurer and credited to the account of the General Expenditure Fund."

Section 17 of the Act as originally passed did provide as above stated (Acts, 1940, Chap. 79, p. 333). However, [fol. 126] the "Kentucky Revised Statute, 1942" issued by the "Statute Revision Committee" omits entirely Section 17 of the original Act. Kentucky Revised Statute 393.250 nor any other of the Kentucky Revised Statutes contains any reference to Section 17 of the old Act or any provision as to what becomes of the "presumed abandoned" or any other money or property escheated or turned over to the department.

So that as the Act now stands, the money is paid to the Department of Revenue with no provision as to what happens to it thereafter—whether it is to be spent for current expenses or whether it is to be held as a trust fund for future claimants. In this connection, it should be remembered that the same thing applies, not only to bank deposits and other presumed abandoned property, but also to all

property that comes to the State under any section of the Escheat Act. This should be another good reason for holding the entire Act invalid.

6. The Opinion states:

“ * * * As said by the Supreme Court in *Provident Institution for Savings v. Malone*, 221 U. S. 660, 31 S. Ct. 661, 55 L. Ed. 899, 31 L. R. S. (N. S.) 1129, in discussing a *somewhat similar statute*, “the statute proceeds on the general principle that corporations may become involved, or may be dissolved; * * * ”

Attention is called to two matters in connection with the above quotation:

(a) Formerly the solicitude of the State for depositors because of the failure, etc., of banks might have been well [fol. 127] taken. However, as the Court judicially knows every National bank and practically, if not, every other bank is a member of the Federal Deposit Insurance Corporation under which deposits are insured or guaranteed by the Government up to \$5,000. (*Bank Deposit Insurance Act*, 12 U. S. C. A. 264, 321, 15 U. S. C. A. 606a.) In other words, the Federal Government has so taken care of depositors that the State need feel no concern for them in case a bank should fail. The reasoning of the Supreme Court in the *Provident Savings* case was correct at the time when it was enunciated prior to the Federal Deposit Insurance Corporation law, but it is no longer pertinent.

(b) The statute of Pennsylvania involved in the case of *Provident Institution for Savings* is as different from the Kentucky Act as day and night. That is, the Pennsylvania statute which is copied in a footnote to the opinion of the Supreme Court (p. 661) provides in general that the court on application of the Attorney General and “*after public notice, order and decree*” that no new deposit or withdrawal has been made for thirty years “and for which no claimant is known or the depositor of it cannot be found” shall be paid to the State to be held “subject to be repaid, * * * with interest at the rate of 3% per annum from the time when it is paid over by him to such person.” In the Kentucky Act the taking is without notice or judicial decree, and no interest is paid by the State even on savings accounts that had been earning interest. Further-

[fol. 128] more, in the Pennsylvania statute, the depositor or owner could recover the deposit and interest on it without limitation as to time.

7. The Court's Opinion lays great stress on the fact that the owner of the deposit can get it back at any time unless there has been a judicial determination of actual abandonment and within five years after such judicial determination.

This is not new in Kentucky escheat law, and does not make the present so-called "transfer of custody" any different from the Kentucky escheat law for the past 101 years.

Since 1842 the Kentucky Statutes have provided for the return of escheated property to the owner without limit as to time. In other words, the present law is not as generous as the prior laws. Under the prior laws a suit, judgment and decree were necessary for the escheat. Notwithstanding such a suit and judicial determination, the law for 101 years has given the proper owner the right to recover the property without any limit as to time, whereas under the present law if there has been a judicial determination of actual abandonment, the proper owner can only recover in five years.

DUE PROCESS OF LAW

8. This Court states in its Opinion (Appendix, pp. 7, 9):

" * * * The mere taking away of the depositor's right of action against the bank constitutes no substantial deprivation of property, when in lieu thereof, [fol. 129] he is afforded an action against the Commonwealth, the most perfect of all protection * * *

"It is our conclusion that the controversial portions of the act are reasonable (as to the time provided as well as to the procedure) and that they would not constitute a deprivation of property without due process of law in violation of the Constitution of the United States even in the absence of the provision requiring notice to be posted at the court house door. Accordingly, it becomes unnecessary to discuss the sufficiency of such notice."

By this language, the Court holds that the depositor is not deprived of his right to contract about his affairs within the meaning of the Fourteenth Amendment because his claim against the State is equally as good as his claim against the bank. Some depositors may agree with that, but others may not because there are essential differences between a claim against the State and a claim against the bank. For instance

(a) To recover money from the State requires the filing of a claim with the Department of Revenue which may be too expensive to prosecute, particularly if the amount involved is small. In contrast, the depositor can withdraw his money from the bank by simply drawing a check on the account.

(b) To recover from the State the depositor must at his own expense advertise that he is making a claim. In contrast, no such advertisement is required to collect from the bank.

[fol. 130] (c) To recover from the State he may have to appeal to the circuit court and there have a second trial *de novo*, which would not be required to collect the money from the bank.

(d) To recover the money from the State the depositor must institute the proceeding at Frankfort. In contrast, he can collect from the bank in the county where the money is deposited which ordinarily would be the county of his residence.

(e) To recover from the State the depositor is dependent upon the sufficiency of the appropriation made for the purpose of reimbursing him. No such obstacle stands in the way of his recovery from the bank.

(f) To recover from the State he faces the possible obstacle that the State may have exceeded its debt limit of \$500,000 under Ky. Const., § 49.

If the amount of money paid over to the State exceeds \$500,000 the State's obligation to return it will constitute a violation of this constitutional provision. No such obstacle stands in the way of his collecting the money from the bank.

(g) As pointed out in 6 (a) above, if the depositor is relegated to his claim against the State, he will not have

the benefit of the guaranty of bank deposits under the Federal Deposit Insurance Statute. Whether the bank is solvent or not he will have this Federal guaranty in the case of nearly all the banks in the State.

[fol. 131] It will not do to say that his claim against the State is just as good a claim as his claim against the bank of his own selection. He has a right to contract for himself concerning his own affairs.

(h) In the case of savings accounts, interest stops running after the money is taken over by the State, whereas it continues to run so long as the money is in the hands of the bank.

As said by the Supreme Court in *Wolff Co. v. Industrial Court*, 262 U. S. 522, 534, in discussing the Kansas Industrial Court Act:

"It curtails the right of the employer on the one hand, and of the employee on the other, to contract about his affairs. This is part of the liberty of the individual protected by the guaranty of the due process clause of the Fourteenth Amendment. *Meyer v. Nebraska*, Ante, 390. While there is no such thing as absolute freedom from contract, and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule, and restraint the exception. The legislative authority to abridge can be justified only by exceptional circumstances."

9. It is too clear for argument that the purpose of this Act was to get revenue which the State expects to use for itself. It was not passed for the protection of the depositors.

(a) The Act was substituted for the escheat Acts formerly in effect and those former Acts were repealed by this Act.

(b) As pointed out by this Court in its opinion, the title to the Act refers to it as an escheat Act. The title should [fol. 132] be considered in determining what the Act means (*Commonwealth Life Ins. Co. v. City of Paducah*, 244 Ky. 756).

(c) As clearly demonstrated in the Briefs (Appellee's Brief, pp. 71, 83-85) the Act was sponsored, not by the

Banking Department, which would normally look after the interests of the depositors, but by the Department of Revenue.

(d) The money when received by the State is put into the general expenditure fund, according to the Act as passed (Ky. Stat. § 1620), which means that it will be used for the current expenses of the State, and not kept as a trust fund for the depositor.

(e) The money is taken over on the theory that it has been abandoned, which can only mean that the State does not expect it to be claimed. Provisions are made whereby the depositor can file a proceeding with the State Tax Commission to get his money back, but not without obstacles and great expense. No mention in the Act is made of any publication or other effort by the State to locate the depositors; and there is not even a publication or any more than a court house door notice to be given before the money is taken over. It is too clear for argument that the State proposes to take private property for public use.

10. The Act provides (K. R. S. 292.130) that:

"Any person who transfers to the department, property to which the state is entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability [fol. 133] by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter."

The Act thus recognizes the possibility, if not the probability, that the Legislature's attempt to relieve the banks from liability is not valid. If the depositor's claim against the bank is not good because of his failure to receive a constitutional notice and hearing before his property is taken, the banks will not be relieved of liability to the depositors. But the Act does not give to the banks any right to file a claim against the Department of Revenue or to sue the State. It gives such right to "any person claiming an interest in any property paid or surrendered to the State" (K. R. S. 393.140), but it does not give such a right to the banks, nor does it authorize suits by the banks against the State. They cannot sue the State in the absence of such permission.

11. Even for a taking of property to be valid in an *in rem* action, the notice must be sufficient to make it reasonably probable that it will be communicated to the defendants in order to constitute due process. Nothing short of that will suffice (*Wachter v. Pizzutti*, 276 U. S. 13, 24; *Roller v. Holly*, 176 U. S. 398). If a notice posted at the court house door was calculated to serve that purpose, it is rather strange that such a procedure for constructive service of process has not been universally followed.

12. It will be remembered that the Kentucky Act requires banks to surrender to the State dormant or inactive bank [fol. 134] deposits without notice to the owner, hearing or judicial decree, and further and what is highly important, the Act requires this voluntary surrender under threat of a 10% penalty against the bank (K. R. S. 393.290).

The Court concludes that such taking by the State does "not constitute a deprivation of property without due process of law in violation of the Constitution of the United States":

" * * * would not constitute a deprivation of property without due process of law in violation of the Constitution of the United States even in the absence of the provision requiring notice to be posted at the courthouse door. Accordingly, it becomes unnecessary to discuss the sufficiency of such notice."

Immediately following this conclusion, the Opinion states:

"The conclusion we have reached is fully supported by *Comth. of Pennsylvania v. Dollar Savings Bank*, 259 Ps. 138, 102 Atl. 569, 1 A. L. R. 1048; *State v. Security Sav. Bank*, — Calif. App. —, 154 Pa. 1070; *Provident Institution for Savings v. Malone*, *supra*, and *Brookline Borough Gas Co. v. Bennett*, 227 N. Y. S. 203. * * *

The Court is respectfully asked to reconsider the above. A re-examination of the cases cited by the Court will show that not one of them supports the Court's conclusion. That is,

[fol. 135] (a) No statute involved in any of the cases was similar to the Kentucky statute. *Not one of the statutes imposed a penalty against the bank or utility for a failure*

to surrender and this omission of a penalty provision is highly important. Since there was no penalty the bank or utility could and did simply wait for the state to bring a suit to recover the deposit so that there actually was suit, notice and judicial decree before the state could get the money. If, in the present case no penalty was imposed on the banks for a failure to voluntarily turn over dormant or inactive accounts, we would have an altogether different situation. The Kentucky banks would simply wait for the State to bring the necessary suit which would mean a notice, hearing and judicial decree.

(b) We discuss briefly each of the cases cited by the Court:

(1) *Commonwealth of Pennsylvania v. Dollar Savings Bank*, 259 Pa. 138, 102 Atl. 569, 1 A. L. R. 1048. The Pennsylvania statute imposed no penalty for a failure to voluntarily turn over the deposit. The bank waited for the state to bring suit. Furthermore, the Pennsylvania court's decision was bottomed on the fact that each of the deposits was made *after* the passage of the Pennsylvania Escheat Act of 1872, and that, therefore, when the deposits were made it was with full knowledge of such law. The Pennsylvania court said:

p. 572. "On the pleadings at bar, there being no averment to the contrary in the affidavits of defense, ~~we must assume all the deposits in controversy~~ to [fol. 136] *have been made subsequent to 1872*; and hence that the respective depositors acted with full knowledge of the provisions of the statutes, passed in that year. . . .

"Before leaving this branch of the case, albeit defendant does not raise the point, it may be well to suggest that, *since the deposits in controversy were all made subsequent to the act of 1872, supra*, in each instance the contract of the depositary must be treated as subject to the terms of the statute here in question:"

(2) *State v. Security Savings Bank*, — Calif. —, 154 Pac. 1070. The opinion in this case is by an inferior court of California. Also, the California statute did not provide any penalty, and so the bank could and did wait for suit, notice, hearing and judicial decree.

It is worthy of note that immediately after this decision by an inferior California court the California act was amended to provide for suit, notice and judicial decree. The amended act was involved in the 262, 263 United States Supreme Court cases.

(3) *Provident Institution for Savings v. Malone*, 221 U. S. 660. It has been shown above that the statute in this Malone case required suit, notice, hearing and judicial decree which entirely differentiates it from our case.

(4) *Brookline-Borough Gas Co. v. Bennett*, 227 N. Y. S. 203.

This was a decision by an inferior court of New York, and not from the Court of Appeals of New York. Also, the New York statute *re* unclaimed utilities deposits im-[fol. 137] posed no penalty for the failure to voluntarily surrender the deposit, and so the utility could and did wait for the suit.

It will be found that the highest court of no State in the Union has approved an Act under which alleged unclaimed deposits of banks or utilities are taken by so-called transfer of custody or by escheat without notice, hearing and judicial decree.

No statute in any State in the Union attempts to take inactive, dormant or unclaimed deposits without notice, suit, hearing and judicial decree *under threat of a penalty*.

The Supreme Court in every case in which it has approved laws taking unclaimed or dormant or inactive bank deposits from State banks only has stressed the point that due process must be observed. This is found in the two Supreme Court cases relied on by this Court.

(a) *Provident Institution for Savings v. Malone*, 221 U. S. 660.

p. 664. " * * * Before the money can be turned over to the receiver general proceedings must be instituted in the Probate Court, and, under the decision of the Supreme Court of the State, personal notice must be given to the bank and citation and notice, usual in the Probate Court, published, so as to give the depositor, if living, and his heirs, if dead, opportunity to appear and be heard. Even then the property is not escheated, but deposited with the treasurer to

hold as trustee for the owner or his legal representatives, to whom it is payable when they establish their right."

[fol. 138] *Security Savings Bank v. California*, 263 U. S. 282.

p. 287. " * * * In either case the essentials of jurisdiction over the deposits are that there be seizure of the *res* at the commencement of the suit; and *reasonable notice and opportunity to be heard*. Compare *Pennoyer v. Neff*, 95 U. S. 714, 724; *Freeman v. Alderson*, 119 U. S. 485, 487; *Arndt v. Griggs*, 134 U. S. 316; *Overby v. Gordon*, 177 U. S. 214, 231. These requirements are satisfied by the procedure prescribed in the statutes of California. There is a seizure or its equivalent. And the published summons to the depositors named as *parties defendant* is supplemented by the notice directed to all claimants whomsoever. * * *

13. It is earnestly insisted that the Court has erred in holding that the requisites of due process, *i. e.*, notice, hearing and judicial decree are not necessary because of the Court's conclusion that the taking is not an "out and out escheat," but what the Court calls "merely a transfer of property." The Opinion states:

" * * * and, were we dealing with an out and out escheat act, their argument would be most persuasive—we would unhesitatingly say that there can be no escheat except pursuant to judicial determination made after legal notice.

"But such is not the case, * * *

" * * * Certain parts of the Act, as indicated above, do relate to out and out escheat but before title can become vested in the state judicial determination is necessary * * *"

Our claim of lack of due process is based on the 14th Amendment to the Federal Constitution. The Amendment does not limit the necessity for due process to those cases where there is a transfer of title. The protection of the [fol. 139] 14th Amendment is thrown around *any kind of taking*.

" * * * nor shall any state deprive any person of property without due process of law."

That a transfer of title to property is not necessary to confiscation is shown in the case of *Chicago, R. I. & P. Ry. Co. v. U. S.*, 284 U. S. 80.

p. 96. "Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title. *Chicago, M. & St. P. Ry. Co. v. Minnesota*, 134 U. S. 418, 458; *Reagan v. Farmer's Loan & Trust Co.*, 154 U. S. 362, 410, 412; *Chicago, M. & St. P. R. Co. v. Wisconsin*, 238 U. S. 491, 498-499. The use of railroad property is subject to public regulation, but a regulation which is so arbitrary and unreasonable as to become an infringement upon the right of ownership constitutes a violation of the due process of law clause of the Fifth Amendment.

Cummins v. Reading School District (1905), 198 U. S. 458.

Pennsylvania adopted a law relating to the grant of letters of administration upon estates of persons, presumed to be dead, by reason of long absence from their domicile.

The appointment of an administrator called for newspaper notice, a hearing in the orphans court, and a finding by the court that the legal presumption of death is made out.

[fol. 140] The Act also provided:

"Nothing in this act contained shall validate the title of any person to any money or property received as widow, next of kin, or heir of such supposed decedent, but the same may be recovered from such person in all cases in which such recovery would be had, if this Act had not been passed."

The Act further provided that before any distribution was made, the person receiving it should give security approved by the Court, to repay if the absentee was in fact alive. If security could not be given then the fund was to be retained and the interest only paid to the distributees.

Mrs. Smith had a dower interest in her husband's land for life. She had been absent for 9 years and her son applied for administration and it was granted and he collected the interest which was in arrears and gave the owner of the land a receipt in discharge.

Mrs. Smith now sued the owner of the land to recover the amount paid to the administrator during her absence.

The court in deciding that the Pennsylvania statute was not repugnant to the 14th Amendment said:

"Let it be further conceded, as we also think is essential, that a state law which did not provide adequate notice as prerequisite to the proceedings for the administration of the estate of an absentee would also be repugnant to the 14th Amendment."

The Court held that the several weeks notice provided by the Pennsylvania statute was reasonable to confer jurisdiction on the Court to make an adjudication, and affirmed a decision for the defendant.

Every rate case in which the utility claims confiscation is based on the 14th Amendment, and of course in rate cases where confiscation is alleged and frequently sustained the state utility commission or other regulatory body have not only not taken title to the utility's property, but have not even taken possession of it.

One of the latest rate cases from the Supreme Court is *Federal Power Commission, et al., v. Natural Gas Pipeline Company*, 315 U. S. 575, 62 S. Ct. Rep. 736, decided March 16, 1942. The Court said:

"By long standing usage in the field of rate regulation the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense."

In other words, the Supreme Court in the last year has reaffirmed the long-standing legal principle that confiscation and a violation of the Federal Constitution may result without a taking of title or even of possession.

It is submitted that the above quotation from the Supreme Court (294 U. S. 80, 96)—"Confiscation may result from the taking of the use or property without compensation as well as from the taking of the title"—is a complete answer to this Court's differentiation of the Supreme Court case of *First National Bank of San Jose v. California*, 262 U. S. 366.

14. The Court is respectfully asked to reconsider that part of its Opinion which holds the Act applicable to deposits heretofore made.

[fol. 142] In two cases this Court has held that this could not be done. The present opinion brushes these cases aside with the statement that "the underlying basis of the Court's conclusion was the absence of perfect protection to the depositor and to the bank."

The opinions referred to contained no such qualification. Right or wrong, this Court held in *Bank of Louisville v. Board of Trustees of Public Schools*, 83 Ky. 219, 5 S. W. 735:

"When a deposit is made in a bank a contract is created between the depositor and it, by which it acquires the right to retain, use and control the money, subject to be returned to its customer upon his demand. That moment a right vests in him to look to the bank, and to it alone, for repayment and, upon the other hand, the bank is invested with the right to hold the deposit against all others. The law then existing becomes an integral part of the contract, and creates these vested rights."

and in *Commonwealth v. Thomas' Adm'r.*, 140 Ky. 789, 131 S. W. 797:

p. 794. " . . . Therefore, though it be conceded that the contracts between the banks and their depositors should have read into them the statute concerning escheats, so as to permit the bank to comply with such statute when the facts brought the case within its terms without liability to the depositor or his heirs, it would be so only as to those deposits made subsequent to the adoption of the statute. . . . "

The Court is asked to adhere to these rules or else if it changes a rule to not do so retroactively.

[fol. 143] The concluding paragraph of the Opinion directs the Circuit Court on the return of the case to fix a reasonable time for compliance with the Act.

In the unlikely event that this Court overrules this petition for rehearing or does not give the relief asked, we respectfully ask the Court to withhold the return of the case to the Circuit Court until we can take an appeal to the Supreme Court. The appeal will be prosecuted with dispatch.

Wherefore, the Court is asked to grant this petition for rehearing and to reverse the decision of the lower court.

Respectfully submitted, Charles W. Milner, Leo T. Wolford, *Attorneys for Appellants.*

Bullitt & Middleton, *of Counsel.*

February 13, 1943.

The Court understands that this request is solely to keep the case *in statu quo* until its ultimate decision.

[fols. 143a-156] (Appendix omitted)

[fol. 157] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

ORDER OVERRULING PETITION FOR REHEARING AND STAYING
MANDATE—May 7, 1943

The Court being sufficiently advised, it is considered that the petition of appellants for a rehearing, be and the same is overruled.

It is further ordered that the mandate not issue until further ordered.

[fol. 158] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

ORDER DIRECTING ISSUANCE OF MANDATE—June 4, 1943

On the Court's own motion, mandate in foregoing case is ordered to issue.

[fol. 159] IN THE COURT OF APPEALS OF KENTUCKY

MANDATE—June 4, 1943

Appeal from a judgment of the Franklin Circuit Court.

ANDERSON NATIONAL BANK, etc., et al., Appellants,

vs.

H. CLYDE REEVES, etc., et al., Appellee

The Court being sufficiently advised, it seems to them the judgment herein is erroneous in part.

It is therefore considered that the judgment be affirmed on the original appeal and reversed on the cross appeal with directions to enter a judgment in conformity with this opinion; An order having been entered in this Court suspending the operation of the Act during the pendency of the appeal, the Circuit Court will on return of the case to that

Court, fix a date for Compliance with the Act giving a reasonable time for that purpose;

Which is ordered to be certified to said court Whole Court Sitting, except Judge Rees.

A copy—Attest:

Chas. K. O'Connell, C. C. A., by Alice G. Casey, D. C.

Issued June 4, 1943.

[fol. 160] IN FRANKLIN CIRCUIT COURT

[Title omitted]

JUDGMENT—June 4, 1943

This day came the defendants, and filed the Mandate of the Court of Appeals of Kentucky, the mandatory part of which is as follows:

“The Court being sufficiently advised, it seems to them the judgment herein is erroneous in part.

“It is therefore considered that the judgment be affirmed on the original appeal and reversed on the cross-appeal, with directions to enter the judgment in conformity with this opinion.

[fol. 161] “An order having been entered in this Court, suspending the operation of the Act during the pendency of the appeal, the Circuit Court will, on return of the case to that Court, fix a date for compliance with the Act, giving a reasonable time for that purpose; which is ordered to be certified to said Court.

“Whole Court sitting, except Judge Rees.”

Thereupon, this cause came on for hearing on the merits, out of term time by agreement of the parties, and the Court being advised, It Is Now Considered, Ordered and Adjudged, as follows, to wit:

1. That the injunction entered herein on May 8, 1942, be, and it is, vacated, set aside and held for naught.

2. That the Kentucky Escheat Act of 1940, being KRS 393.010 through 393.990 (formerly Carroll's Kentucky

Statutes 1605-a through 1622-1, as amended by Chapter 156 of the Acts of the General Assembly of 1942), as applied to the plaintiff, Anderson National Bank, suing on behalf of itself and all others similarly situated, is valid and is not in conflict with the National Banking Act, or with the Due Process Clause of the State Constitution, or of the Fourteenth Amendment of the Constitution of the United States.

3. That the plaintiff's petition herein be, and it is, dismissed.

4. That the plaintiff, Anderson National Bank, and all others similarly situated, shall have ninety (90) days from this date within which to comply with the provisions of [fol. 162] the said Kentucky Escheat Act.

5. The plaintiffs object and except to this judgment, and pray an appeal to the Court of Appeals, which is hereby granted.

W. B. Ardery, Judge Franklin Circuit Court.

[fol. 163]

[File endorsement omitted]

IN THE COURT OF APPEALS OF KENTUCKY

[Title omitted]

MOTION AS TO RECORD AND TO ADVANCE—Filed June 10, 1943

Appellant, Anderson National Bank, suing on behalf of itself and all others similarly situated, moves the Court:

1. To file the Record on this appeal with, and as a part of, the Record on the first appeal of this case to this Court;

2. To docket, advance and submit this case.

Charles W. Milner, Leo T. Wolford, Counsel for appellant.

Bullitt & Middleton, of Counsel.

Notice accepted: Earl S. Wilson, Attorney for Appellees.
June 10, 1943.

[fol. 164] IN COURT OF APPEALS OF KENTUCKY

ANDERSON NATIONAL BANK, etc., Appellant,

vs.

H. CLYDE REEVES, etc., et al., Appellees

Appeal from a Judgment of the Franklin Circuit Court

JUDGMENT—June 15, 1943

The Court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further considered that the appellees recover of the appellant, their costs herein expended.

[fol. 165] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

OPINION—June 15, 1943

OPINION BY CHIEF JUSTICE FULTON—AFFIRMING

This is the second appeal of this case. The opinion on the first appeal, reported in 293 Ky. 735, 170 S. W. (2d) 350, upheld the validity of the principal sections of Chap. 79 of the Acts of 1940 as amended by Chap. 156 of the Acts of 1942 (KRS 393.010 et seq.) and affirmed the judgment of the lower court on the appeal but reversed it on the cross-appeal.

On the return of the case to the lower court judgment was entered in conformity with the opinion. This appeal is from that judgment.

We are bound by the opinion on the first appeal, whether it be right or wrong, under our familiar law of the case rule. We have considered the contentions 1) that the Act in question conflicts with the National Banking Act and 2) that it is violative of the due process clause of the 14th [fol. 166] Amendment to the Federal Constitution and find the contentions without merit.

Since the judgment is in conformity with the former opinion it is affirmed.

Bullitt & Middleton, Louisville, Ky., Charles W. Milner, Louisville, Ky., Leo T. Wolford, Louisville, Ky., Attorneys for Appellant. Hubert Meredith, Attorney General, Earl S. Wilson, Assistant Attorney General, A. E. Funk, Assistant Attorney General, Attorneys for Appellees.

[fol. 167] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

PETITION FOR APPEAL FROM THE COURT OF APPEALS OF KENTUCKY TO THE SUPREME COURT OF THE UNITED STATES

To the Chief Justice of the Court of Appeals of Kentucky:

Your Petitioner, Anderson National Bank, Suing on Behalf of Itself and All Others Similarly Situated (hereinafter, called the Banks) respectfully shows:

1. The Petitioner is the appellant in the above entitled cause.

2. The appeal in such cause was from a judgment rendered in a civil action on June 4, 1943 by the Franklin Circuit Court of Kentucky against the Banks and in favor of [fol. 168] H. Clyde Reeves, Individually and as Commissioner of Revenue of the State of Kentucky and a Member of the Kentucky Tax Commission; C. M. C. Porter and R. L. McFarland, individually and as Associate Commissioners of Revenue of the State of Kentucky, and as Members of the Kentucky Tax Commission, and Hubert Meredith, Individually and as Attorney General of the State of Kentucky, the Respondents herein upon the trial of said cause.

3. On appeal by the Banks from such judgment to the Court of Appeals of Kentucky (which Court is the highest court of law and equity in the State of Kentucky in which a decision of the matter of controversy could be had), the judgment appealed from was affirmed by the final judgment entered in the Court of Appeals of Kentucky on June 15, 1943, and the opinion of such Court was filed on June 15, 1943.

4. There is error in the final judgment and the record of proceedings in such cause in the Court of Appeals of Kentucky whereby the Banks are aggrieved in that (1) there was drawn in question the validity of the Kentucky Escheat Act of 1940, being KRS 393.010 through 393.990 (formerly Carroll's Kentucky Statutes 1605-a through 1622-1, as amended by Chapter 156 of the Acts of the General Assembly of 1942), as construed by the Court of Appeals of Kentucky, (2) the Court of Appeals of Kentucky has construed such Kentucky Statutes (a) as requiring all National and State Banks in Kentucky to report to the Department of Revenue annually all demand and time deposits which have been inactive or dormant for eight and twenty-five years respectively; (b) as requiring persons holding personal property for the benefit of another which has been [Vol. 169] unclaimed for ten years to report such personal property to the Department of Revenue annually; (c) as requiring that such inactive or dormant deposits in National and State Banks and such unclaimed personal property must, under heavy penalty, be voluntarily turned over to the Department of Revenue of Kentucky without notice to the owner, suit or judicial decree and (d) that the State of Kentucky can take such inactive or dormant deposits and such other unclaimed personal property without notice to the owner, suit or judicial decree. The Court of Appeals of Kentucky held in such decision against the contention of the Banks, that such Kentucky Statutes so construed by it as to National Banks do not violate the National Banking Act and the Court of Appeals of Kentucky held in such decision against the contention of the Banks that such Kentucky Statutes so construed by it as to all banks and holders of personal presumed abandoned property do not violate the due process clause of the 14th Amendment of the Constitution of the United States; and the decision and judgment of the Court of Appeals of Kentucky sustained the right of the State to (a) take such deposits from National Banks; (b) take such deposits and such other personal property from all banks and from others without notice to the owner, suit or judicial decree, and (c) require National and State Banks and others, under heavy penalty to voluntarily turn over to the Department of Revenue of Kentucky said deposits and said personal property and such Court rendered its decision in favor of the legality and validity of such Statutes of the State of Kentucky.

[fol. 170] Wherefore, Your Petitioner, Anderson National Bank, Suing on Behalf of Itself and All Others Similarly Situated prays for the allowance of an appeal from the said Court of Appeals of Kentucky to the Supreme Court of the United States in order that such decision and judgment of the Court of Appeals of Kentucky may be examined and reversed, and it also prays that a transcript of the record, proceedings and papers in this case duly authenticated by the Clerk of the Court of Appeals of Kentucky may be sent to the Supreme Court of the United States as provided by law.

Your Petitioner, Anderson National Bank, Suing For Itself and All Others Similarly Situated further prays that the appeal herein may be a supersedeas; that an order be made fixing the security required; that on approval of such security such appeal may be allowed as a supersedeas.

The errors upon which your Petitioner claims to be entitled to an appeal are those hereinbefore indicated and which are more fully set out in the Assignment of Errors filed herein dated this 18th day of June, 1943.

Charles W. Milner, Leo T. Wolford, Counsel for Appellants and Petitioners Herein.

Bullitt and Middleton, of Counsel.

Have Seen, Earl S. Wilson, Attorney for Appellees.

[fol. 171] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

ASSIGNMENT OF ERRORS

Anderson National Bank Suing on Behalf of Itself and All Others Similarly Situated (hereinafter called the Banks), Appellants herein and as appellants to the Supreme Court of the United States from the judgment and decision heretofore entered herein assign the following errors in connection with its petition for appeal to the Supreme Court of the United States:

The Court of Appeals of Kentucky erred:

(1) In holding that the Kentucky Escheat Act of 1940, being KRS 393.010 through 393.990 (formerly Carroll's Kentucky Statutes 1605-A through 1622-1, as amended by

[fol. 172] Chapter 156 of the Acts of the General Assembly of 1942), and which provide that demand and time deposits in National and State Banks which have been dormant or inactive for ten and twenty-five years, respectively, and that all other personal property held within Kentucky by any person for the benefit of another and which has been unclaimed for a period of ten years are presumed abandoned and must be reported to the Department of Revenue of Kentucky, and, under heavy penalty, must be voluntarily turned over to the Department of Revenue, are valid and constitutional.

Q

(2) In holding that said statutes as construed by the Court of Appeals of Kentucky as requiring National Banks, under heavy penalty, to voluntarily turn over to the Department of Revenue deposits on account of inactivity or dormancy do not violate the National Banking Act.

(3) In holding that the said statutes as construed by the Court of Appeals of Kentucky as requiring all banks, under heavy penalty, to voluntarily and without suit or judicial decree turn over to the Department of Revenue deposits on account of inactivity or dormancy do not violate the due process clause of the 14th Amendment of the Constitution of the United States.

(4) In holding that said statutes as construed by the Court of Appeals as requiring all persons in Kentucky who hold personal property for the benefit of another, and which has been unclaimed for a period of ten years must, under heavy penalty, voluntarily turn over such property to the Department of Revenue without suit, notice or judicial [fol. 173] decree are not violative of the due process clause of the 14th Amendment of the Constitution of the United States.

(5) In holding that the State of Kentucky can take or escheat deposits in National Banks on account of inactivity or dormancy.

(6) In holding that the State of Kentucky can take or escheat deposits in any bank on account of inactivity or dormancy without notice to the owner of such deposits and without suit or judicial decree.

(7) In holding that the State of Kentucky can take or escheat personal property held by any person for the

benefit of another and which is claimed without notice to the owner of such property and without suit and judicial decree.

(8) In holding that the State of Kentucky can require National or State Banks or other persons who hold property for the benefit of another to hand over such property to the state or to any of its agencies without notice to the owner of such property and without judicial decree.

(9) In holding that, "the portions of the Act dealing with dormant bank deposits do not provide for a seizure of the deposits and vesting of title or ownership in the State but merely for a transfer of property."

(10) In holding that "the controversial portions of the Act are reasonable (as to the time provided as well as to the procedure), and that they would not constitute a deprivation of property without due process of law in violation of the Constitution of the United States even in the [foi. 174] absence of the provision requiring notice to be posted at the courthouse door."

(11) In holding that "there is no unwarranted interference with such (National) Banks, and no frustration of the purposes of national legislation concerning them such as to render the Act invalid as to them."

Charles W. Milner, Leo T. Wolford, Counsel for
Appellants and Petitioners Herein.

Bullitt and Middleton, Of Counsel.

Have Seen:

Earl S. Wilson, Attorney for Appellees.

7. ———

[foi. 175]

[File endorsement omitted]

IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 18, 1943

This day came the Anderson National Bank, Suing on Behalf of Itself and All Others Similarly Situated, and filed herein its Petition for Appeal to the Supreme Court of the United States from the Court of Appeals of Ken-

tucky, its Assignment of Errors in connection therewith, Statement as to the Jurisdiction of the Supreme Court of the United States and it appearing from the Record of the above entitled cause that there was drawn in question the illegality and unconstitutionality of the Kentucky Escheat Act of 1940, being KRS 393.010 through 393.990 (formerly Carroll's Kentucky Statutes 1605-A through 1622-1, as amended by Chapter 156 of the Acts of the General Assembly of 1942) and that Anderson National Bank suing on Behalf of Itself and All Others Similarly Situated contended before the Court of Appeals of Kentucky (1) that said Escheat Act as amended, requiring delivery to [fol. 176] the State of deposits declared to be presumed abandoned, constitute in effect, an attempted escheat of such deposits, is invalid and contrary to the due process clause of the 14th Amendment of the Constitution of the United States because of the absence of a requirement in said Act as amended of notice and judicial determination and (2) that as applied to National Banks said act as amended violates the National Banking Act; and that by its decision this Court considered such matters urged by the Anderson National Bank, Suing On Behalf of Itself And All Others Similarly Situated and decided that said Escheat Act as amended was legal, valid and constitutional in all respects, and did not violate the due process clause of the 14th Amendment to the Federal Constitution and was not in contravention of or in conflict with the National Bank Act, and that the decision of this Court was in favor of the legality of said Statutes of the State of Kentucky as interpreted, construed and applied by this Court.

It is ordered that an appeal be, and hereby, is allowed to the Supreme Court of the United States from the Court of Appeals of Kentucky as prayed in such petition, and that the Clerk of the Court shall within thirty (30) days from this date prepare, certify and transmit to the Clerk of the Supreme Court of the United States under his hand and seal of this Court a Transcript of the Record and proceedings herein.

It is further ordered that the Appellant, Anderson National Bank, Suing On Behalf Of Itself and All Others Similarly Situated, shall execute bond with surety to be approved by the undersigned in the sum of \$3,000 conditioned according to law, which bond shall operate as a supersedeas.

[fol. 177] The said Appellant, now having presented a bond in sum of \$3,000 with the Aetna Casualty & Surety Company, as Surety, it is ordered that the same be, and hereby, it is approved.

Will H. Fulton, Chief Justice of the Court of Appeals of Kentucky.

June 18, 1943.

[fols. 178-185] Bond on appeal for \$3,000—00/190 approved June 18, 1943, omitted in printing.

[fol. 186] IN COURT OF APPEALS OF KENTUCKY

[Title omitted]

PRÆCIPE FOR RECORD

To the Clerk of the Court of Appeals of Kentucky:

You are hereby requested to make a Transcript of Record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such Transcript of Record copies of the following papers filed on the dates as follows, to-wit:

Plaintiffs' Bill of Complaint in Equity and Petition for a Declaratory Judgment, August 27, 1940, and the Exhibits and Appendix thereto.

Plaintiffs' Notice of Motion for Temporary Injunction, August 27, 1940.

Plaintiffs' Motion for Temporary Injunction, August 27, 1940.

[fol. 187] Order of Franklin Circuit Court granting Temporary Injunction, August 27, 1940.

Bond, August 27, 1940.

Defendants' Demurrer, September 26, 1940.

Order, Franklin Circuit Court, September 26, 1940.

Defendants' Motion to Strike, September 26, 1940.

Defendants' Answer, October 15, 1941.

Order, Franklin Circuit Court, January 30, 1942.

Plaintiffs' Demurrer, January 30, 1942.

Order, Franklin Circuit Court, January 30, 1942.

Order, Franklin Circuit Court, April 13, 1942.

Defendants' Motion, April 13, 1942.

Defendants' Motion, April 13, 1942.

Order, Franklin Circuit Court, April 16, 1942.
 Defendants' Amended Answer, April 16, 1942.
 Plaintiffs' Demurrer to Defendants' Amended Answer,
 April 23, 1942.
 Order, Franklin Circuit Court, April 23, 1942.
 Order, Franklin Circuit Court, May 8, 1942.
 Plaintiffs' Motion, July 3, 1942.
 Order, Franklin Circuit Court, July 3, 1942.
 Supersedeas Bond, July 3, 1942.
 Supersedeas, July 3, 1942.
 Order and Opinion of Court of Appeals, December 18,
 1942.
 Petition for Rehearing, February 15, 1943.
 Order, Court of Appeals, May 7, 1943.
 Order, Court of Appeals, June 5, 1943.
 Mandate, Court of Appeals, issued June 4, 1943, Filed
 in Franklin Circuit Court, June 4, 1943.
 Judgment, Franklin Circuit Court, June 4, 1943.
 Appellant's Motion in Court of Appeals, June 9, 1943.
 [fol. 188] Order, Court of Appeals, June 15, 1943.
 Opinion, Court of Appeals, June 15, 1943.

The following papers in connection with the appeal to
 the Supreme Court of the United States:

Petition for Appeal.
 Assignment of Errors.
 Separate Statement as to Jurisdiction required by Para-
 graph I, Rule 12 of the Revised Rules of the Supreme Court
 of the United States.
 Order Allowing Appeal.
 Appeal Bond.
 Citation with Return or Admission of Service.
 Notice and Statement to Appellee Pursuant to Rule 12,
 Paragraph 2.
 This Praecipe.
 (Signed) Charles W. Milner, Leo T. Wolford, At-
 torneys for Anderson National Bank, Suing on
 Behalf of Itself and All Others Similarly Situ-
 ated.
 Bullitt and Middleton, Of Counsel.
 Have seen:
 This 18th day of June, 1943.
 (Signed) Earl S. Wilson, Attorney for Appellees.

[fol. 189] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 190] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

[Title omitted]

STATEMENT OF POINTS AND DESIGNATION OF RECORD—Filed July 22, 1943

Now comes the Appellant in the above entitled cause and for its statement of points to be relied upon adopts its Assignment of Errors and states that the entire record as certified is necessary for the use of the Court.

Charles W. Milner, Leo T. Wolford, Attorneys for Appellant.

Bullitt & Middleton, of Counsel.

Copy received this 16 day of July, 1943.

Earl S. Wilson, A. E. Funk, Attorneys for Appellees.

[fol. 191] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 11, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 47,647. Kentucky, Court of Appeals. Term No. 154. Anderson National Bank, Suing on behalf of itself and all others similarly situated. Appellants, vs. H. Clyde Reeves, Individually and as Commissioner of Revenue of the State of Kentucky, etc., et al. Filed July 12, 1943. Term No. 154 O. T. 1943.

